

***United States Court of Appeals
for the Second Circuit***



**APPELLANT'S
APPENDIX**

76-1560

United States Court of Appeals

FOR THE SECOND CIRCUIT

Docket No. 76-1560

UNITED STATES OF AMERICA,

Appellee,

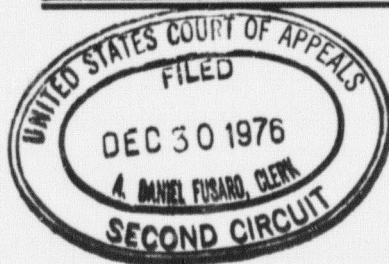
—against—

GERALD JOSEPH GERARDI,

Defendant-Appellant.

ON APPEAL FROM THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF NEW YORK
(BRAMWELL, D.J.)

APPENDIX IN BEHALF OF APPELLANT GERALD JOSEPH GERARDI



FRANK A. LOPEZ
Attorney for Appellant
Gerald Joseph Gerardi
31 Smith Street
Brooklyn, New York 11201
Telephone (212) 237-9500

PAGINATION AS IN ORIGINAL COPY

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A 1

75 CR 850

GERARDI, GERALD JOSEPH

Case File No. 11-11-75 850 2

0721

11-371

Did conspire to bank robbery and use
of dangerous weapons

Samuel Dawson

T. Jones, 860 Fulton St.,
Brooklyn, NY. 11238 638-7575

11-11-75

MAILED 75 M 1886

☐ Personal Recog
☐ Unsecured Bond
 AMT - Conditional Release
 Set (1000) ☐ 10% Deposit
☐ Surety Bond
☐ Collateral
☐ 3rd Party
☐ Custody
☐ PSA
 (See Docket)

SEARCHED	INDEXED	DATE	INITIALS	INITIALS	INITIALS	OUTCOME
Issued						
Returned						
Served						
Arrest Warrant		11-3-75	VAC 070A			
COMPLAINT		11-3-75	VAC 070A			
OFFENSE		T. 18 USC §2113(a)(c)(d) Conspiracy to take from persons and presence of employees of several banks quantity of US Currency in custody of said banks				

V. Excludable Delay			
(a)	(b)	(c)	(d)
SCHRETER 1; JULIANC 3 11-3-75 Complaint filed - Arrest Warrant Issued 9:30 P. M. - AUCASamuel Dawson - See also 75 M 1887, 75 M 1891, 75 M 1892 75 M 1893. 11/11/75 Indictment Filed. See 75 CR 850. (before J. Costantino) 11-25-75 Before BRAMWELL, J - case called - deft not present - atty Jacob Lefkowitz not present - adjd to Dec 12, 1975 for status report. 12/12/75 Before BRAMWELL, J- Case called-adjd to 1/5/76 at 10:00 A.M. 1/5/76 Before BRAMWELL, J.- Case called- adjd to 1/13/76 for plead- ing 1-13-76 Before BRAMWELL, J - case called - deft & counsel present without counsel-court enters a plea of not guilty on behalf of the deft - court to assign counsel Theodore Jones as counsel for the deft -bail fixed at \$500,000.-- as to the deft - Financial statement signed by the deft. 1-14-76 By Bramwell, J - Order apptg counsel filed. 1-15-76 Notice of Readiness for Trial filed 2/20/76 Petition for writ of habeas corpus ad prosequendum filed- issued 2/23/76 Before BRAMWELL, J.- Case called- adjd to 2/27/76 at 10:00			

DATE	IV. PROCEEDINGS (continued)	(a)	(b)	(c)
2-25-76	Writ ret'd and filed- executed			
2-27-76	Before BRAMWELL, J - case called - deft & atty T. Jones present - 30 days for motions - case adj'd to May 10, 1976 for trial.			
3-18-76	Notice of readiness for trial filed			
4-6-76	Before BRAMWELL, J - case called - deft & counsel T. Jones present - deft withdraws plea of not guilty and having been advised of his rights by the court and on his own behalf enters a plea of guilty as charged - bail cont'd and sentence adj'd without date.			
5-26-76	Stenographers transcript filed dated 4-6-76			
6-11-76	Before BRAMWELL, J - case called & sentence adj'd to July 2, 1976 at 10:00 am.			
7-2-76	Before BRAMWELL, J - Case called. Deft not present, Counsel present. Sentence adj'd to 7-23-76 at 10 A.M.			
7/23/76	Before BRAMWELL, J. - Case called. Deft Gerardi & Counsel present. Sentence adj'd to 9/24/76 at 10:00 a.m. on consent.			
9-15-76	Notice of motion filed for withdrawal of plea, Rule 32(d) ret. 9-24-76.			
9-24-76	Before BRAMWELL, J. - Case called. Deft present. Counsel not present. Case adj'd to 9-27-76 at 10 A.M.			
9-27-76	Before Bramwell, J - case called - sentence adj'd to Oct. 8, 1976.			
9-27-76	Before Bramwell, J - case called - deft & counsel Frank Lopez present - Mr. T. Jones is relieved as counsel for the deft - adj'd to Oct, 8, 1976.			
9-27-76	Notice of appearance filed.			
10/7/76	Affidavit and govt mem of law in opposition to the defts application to withdraw his guilty plea pursuant to rule 32 (d) filed and forwarded to chambers,			
10-8-76	Before BRAMWELL, J. - Case called. Deft & counsel present. Motion permitting withdrawal of previous plea submitted. Adj'd to 10-15-76 at 10 A.M.			
10-8-76	Affirmation of actual engagement filed.			
10-14-76	Reply affidavit filed on application for withdrawal of plea (deft GERARDI)			
10-15-76	Before BRAMWELL, J - case called - deft GERARDI & atty F. Lopez present - defts motion to withdraw plea of guilty etc. motion denied - Settle Order on Motion. Deft sentenced to imprisonment for 4 years. Sentence herein imposed shall be concurrent to sentence presently imposed on the deft and that deft shall become eligible for parole under 18:4205(b)(2) at such time as Parole Comm. may determine and to run concurrent with the unexpired Parole term.			
10-15-76	Judgment and commitment filed - certified copies to Marshal.			
10-19-76	Judgment & commitment ret'd and filed - xxx copies of Judgment del. to MCC			
10-21-76	Notice of appeal filed - docket entries and duplicate of Notice mailed to the court of appeals			

A 3
UNITED STATES DISTRICT COURT
CRIMINAL DOCKET

U. S. vs

GERALD JOSEPH GERARDI

Yr. Docket No. Def.

DATE	PROCEEDINGS (continued)	V. EXCLUDABLE DELAY			
		(a)	(b)	(c)	(d)
11-10-76	Judgment and commitment retd and filed - deft. delivered to U.S.P., Atlanta, Ga.				
11-11-76	Stenographer's Transcript dated September 24, 1976 filed.				
11-12-76	Order received from Court of Appeals that the appeal be docketed and the record filed on or before November 30, 1976. - filed.				
11-26-76	Stenographer's Transcript dated April 6, 1976 filed.				

Interval
(per Section 11)

Start Date
End Date

Li. To
Code D.

United States of America vs.

United States District Court for

Eastern Dist. of NY

DEFENDANT

GERALD JOSEPH GERARDI

DOCKET NO.

75 CR 850

4

JUDGMENT AND PROBATION/COMMITMENT ORDER

In the presence of the attorney for the government,
the defendant appeared in person on this date

MONTH DAY YEAR
Oct. 15 1976

COUNSEL

☐ WITHOUT COUNSEL

However the court advised defendant of right to counsel and asked whether defendant desired to have counsel appointed by the court and the defendant thereupon waived assistance of counsel.

☒ WITH COUNSEL

Frank Lopez

(Name of counsel)

PLEA

☒ GUILTY, and the court being satisfied that there is a factual basis for the plea,

☐ NOLO CONTENDERE,

☐ NOT GUILTY

There being a finding/verdict of

☐ NOT GUILTY. Defendant is discharged

☐ GUILTY.

FINDING & JUDGMENT

Defendant has been convicted as charged of the offense(s) of **violating T-18, U.S.C. Sec. 371 in that on or about and between Sept. 9 and Nov. 4, 1975, both dates being approximate and inclusive, the defendant, with others, did unlawfully conspire to commit an offense against the U.S. in violation of T-18, U.S.C. Sec. 2112(a)(4) by conspiring to take from the person and presence of employees of several and diverse banks by force, violence, intimidation and the use of dangerous weapons, a quantity of U.S. currency which currency was in the care, custody, possession, control, or transport of said banks, and there**
The court, after hearing the defendant and the government, and finding that the defendant was shown, or appeared to the court, the court adjudged the defendant guilty as charged and convicted and ordered that: The defendant is hereby committed to the custody of the Attorney General or his authorized representative for imprisonment for a period of

SENTENCE OR PROBATION ORDER

4 years as charged. The sentence imposed herein shall be concurrent to sentence presently imposed on the defendant and that the defendant shall become eligible for parole under T-18, U.S. Code, Sec. 4205(b)(2) at such time as Parole Commission may determine and to run concurrent with the unexpired Parole Term.

SPECIAL CONDITIONS OF PROBATION

ADDITIONAL CONDITIONS OF PROBATION

In addition to the special conditions of probation imposed above, it is hereby ordered that the general conditions of probation set out on the reverse side of this judgment be imposed. The Court may change the conditions of probation, reduce or extend the period of probation, and at any time during the probation period or within a maximum probation period of five years permitted by law, may issue a warrant and revoke probation for a violation occurring during the probation period.

COMMITMENT RECOMMENDATION

The court orders commitment to the custody of the Attorney General and recommends,

It is ordered that the Clerk deliver a certified copy of this judgment and commitment to the U.S. Marshal or other qualified officer.

SIGNED BY

☒ U.S. District Judge

☐ U.S. Magistrate

Henry Bramwell

Date

Oct 15, 1976

CERTIFIED AS A TRUE COPY ON

THIS DATE

10/15/76

By *Giusti*
CLERK
(DEPUTY)

A

5

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

United States of America,

-against-

Gerald Joseph Gerardi,

Defendant-Appellant.

Docket Number

75 Cr. 850 (HB)

HON. HENRY BRAMWELL

(District Court Judge)

NOTICE OF APPEAL
Gerald Joseph Gerardi,

Notice is hereby given that _____ appeals to

the United States Court of Appeals for the Second Circuit from the xx Judgment order other
(specify) _____ entered in this action on October 8th, 1976
(Date)

Date October 21st, 1976

Address

Frank A. Lopez (Counsel for Appellant)
31 Smith Street
Brooklyn, New York 11201
Telephone (212) 237-9500

To: Hon. David G. Trager
United States Attorney
Eastern District of New York
225 Cadman Plaza East
Brooklyn, New York 11201

Phone Number

(212) 237-9500

ADD ADDITIONAL PAGE IF NECESSARY

(TO BE COMPLETED BY ATTORNEY)

TRANSCRIPT INFORMATION - FORM B

QUESTIONNAIRE

TRANSCRIPT ORDER

DESCRIPTION OF PROCEEDINGS
FOR WHICH TRANSCRIPT IS
REQUIRED (INCLUDE DATE).

- ☒ I am ordering a transcript
☐ I am not ordering a transcript
Reason:
☐ Daily copy is available
☐ U.S. Attorney has placed order
☐ Other. Attach explanation

Prepare transcript of
☐ Pre-trial proceedings
☒ Trial
☐ Sentence
☐ Post-trial proceedings
Plea of April 6th 1976
Adjournments June 11th 1976,
July 2, 1976, July 23rd, 1976,
October 8th, 1976, Sept. 24th, 1976
Oct. 15th, 1976.

The ATTORNEY certifies that he will make satisfactory arrangements with the court reporter for payment of the cost of the transcript. (FRAP 10(b)) ☒ Method of payment ☐ Funds ☐ CJA Form 21

ATTORNEY'S signature

October 21st, 1976.

COURT REPORTER ACKNOWLEDGEMENT

To be completed by Court Reporter and
forwarded to Court of Appeals.

Date order received

Estimated completion date

Estimated number
of pages.

Date _____

Signature _____

(Court Reporter)

COPY FOR DEFENDANT

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

-----x
UNITED STATES OF AMERICA,

Plaintiffs,

Docket No. 75 Cr. 850 (HB)

-against-

GERALD JOSEPH GERARDI,

MOTION FOR WITHDRAWAL
OF PLEA, Rule 32(d),
F.R.C.P.

Defendant.
-----x

TO THE HONORABLE HENRY BRAMWELL,
District Judge.

S I R :

PLEASE TAKE NOTICE, that upon the annexed affidavit of GERALD GERARDI, defendant herein, duly sworn and subscribed to the 13th day of September 1976, and upon the indictment and all other proceedings had herein, the undersigned in behalf of the afore-mentioned defendant, will move this Court before the HONORABLE HENRY BRAMWELL, District Judge, at the United States District Court for the Eastern District of New York, at the United States Courthouse located at 225 Cadman Plaza East, County of Kings, Borough of Brooklyn, City and State of New York, on the 24th day of September, 1976, for an Order pursuant to Rule 32(d) of

the Federal Rules of Criminal Procedure, permitting the defendant GERARDI to withdraw his previously entered plea of "Guilty" on April 6th, 1976, to the instant indictment, reinstating his previous plea of "Not Guilty", expunging the record of April 6th, 1976, together with such other and further relief as may be just and proper in the circumstances.

DATED: Brooklyn, New York, September 13th, 1976.

Respectfully submitted,

FRANK A. LOPEZ
Attorney for Defendant
GERALD GERARDI
31 Smith Street
Brooklyn, New York 11201
Tel. (212) 237-9500

TO:
HONORABLE HENRY BRAMWELL
District Judge
United States District Court
Eastern District of New York
225 Cadman Plaza East
Brooklyn, New York 11201

HONORABLE DAVID G. TRAGER
Attention: Samuel H. Dawson, Esq.
Assistant United States Attorney
Eastern District of New York
225 Cadman Plaza East
Brooklyn, New York 11201

CLERK, CRIMINAL TERM
United States District Court
Eastern District of New York
225 Cadman Plaza East
Brooklyn, New York 11201

1

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

-----x

UNITED STATES OF AMERICA,

Plaintiffs,

-against-

GERALD JOSEPH GERARDI,

Defendant.

Docket No. 75 Cr. 850 (HB)

DEFENDANT'S AFFIDAVIT
FOR WITHDRAWAL OF PLEA

-----x

STATE OF NEW YORK)
 SS:
COUNTY OF NEW YORK)

GERALD JOSEPH GERARDI, being duly sworn, deposes and says:

1. That I am the defendant in the above-entitled action, wherein I was charged with conspiracy to commit bank robbery with the use of dangerous weapons [18 U.S.C. §§ 2113(a) (c) (d)].

2. That I am represented by Frank A. Lopez, Esq., of 31 Smith Street, Brooklyn, New York, to represent me as retained counsel in this action.

3. That on April 6th, 1976, your deponent appeared before the Honorable Henry Bramwell, District Judge, with his then assigned attorney, Theodore T. Jones, Esq., and retracted his plea of "Not Guilty" and entered a

plea of "Guilty" to the conspiracy count 18 U.S.C. § 371, charged in the indictment.

4. That your deponent is innocent of the charge and makes this application for the retraction of his guilty plea of April 6th, 1976, for the reinstatement of his "Not Guilty" plea to the indictment, that the record of retraction of plea of April 6th, 1976, be expunged and that a trial date be set so that a petite jury may hear all the evidence on the issue of the innocence or guilty of your deponent.

5. That your deponent had great reluctance to enter a plea of guilty to the charge of conspiracy on April 6th, 1976. That he was under the mistaken impression that because of his co-defendants Marshall K. Schreter and Anthony M. Jullano were entering pleas of guilty that his choices as to proceeding to trial were also limited. That even as your deponent was questioned by the Court to establish a factual basis under Rule 11, F.R.C.P., for the taking of the plea, your deponent was at best equivocal and displayed reluctance at the entering of the plea [Exhibit A]. For instance, at p.36:

"THE COURT: Were you involved in this in any way?"

"DEFENDANT GERARDI: Into stealing from the banks?"

"THE COURT: Into stealing from these banks."

"DEFENDANT GERARDI: No, sir."

At p. 37, the following exchange takes place:

"THE COURT: Was there a conspiracy between yourself and Mr. Schreter to do something?"

"DEFENDANT GERARDI: The way I understand the conspiracy right now, I have to say --"

"THE COURT: A conspiracy is an agreement. Was there a criminal agreement between yourself and Mr. Schreter?"

"DEFENDANT GERARDI: Well, I guess I'll have to say, yes."

At pp. 37-38, the following ensues:

"THE COURT: . . . What was the purpose in looking at the banks? What was your purpose in driving in the vicinity and looking at the banks?"

"DEFENDANT GERARDI: I believe riding in the vicinity for a later date to be robbed, I guess." [Stress supplied]

6. That in addition your deponent has received assurances from co-defendants Marshall K. Schreter and Anthony M. Juliano, that they are prepared to furnish me with affidavits establishing that I was unaware of a conspiracy to rob banks at the time and that furthermore defendants Schreter and Juliano are prepared to testify in my behalf in order to establish my innocence.

7. That Assistant United States Attorney Dawson indicated to the Court at the time of retraction of plea on April 6th, 1976, that the Government would

recommend at the time of imposition of sentence that this Court run the operation of any sentence concurrent with an eight year sentence in which I am currently under service and which is presently on appeal in the United States Court of Appeals for the First Circuit, under Docket No. 76-1153. The result would be that if the conviction is affirmed in the First Circuit and this Court does follow the recommendation of the Government the time would not be consecutive but concurrent but that your deponent would have an additional felony against him. On the other hand, if on direct appeal the First Circuit reverses my conviction, I will be in fact incarcerated under this sentence for a crime which not only I did not commit but of which I was not aware of until after my arrest.

8. That the Government, your deponent verily believes, has not been prejudiced and your deponent has no reason to believe that the Government's reliance on my guilty plea has in any way weakened their case against me such as it is. See, e. g. United States v. Jerry, 487 F. 2d 600 (3rd Cir. 1973). Nor for this matter does your deponent make this application as a ploy or to gain an undeserved advantage or to defeat unfairly the action taken against him.

9. That because your deponent is innocent of the charge, there was a factual lack of compliance with Rule 11, co-defendants are now willing to testify in my behalf and the Government has not been prejudiced, I should be allowed to withdraw my plea.

10. That no previous application has been made for the relief requested herein.

WHEREFORE, your deponent respectfully requests that the relief noted in the annexed Notice of Motion be granted.

GERALD JOSEPH GERARDI

Sworn and subscribed to before me this
13th day of September, 1976.

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK
-----X

A 13

UNITED STATES OF AMERICA

- against -

GERALD JOSEPH GERARDI,

Defendant.
-----X

AFFIDAVIT

Index No.
75 Cr 850

STATE OF NEW YORK)
) ss:
COUNTY OF KINGS)

SAMUEL H. DAWSON, being duly sworn, deposes and
says:

1. That I am an Assistant United States Attorney, in the office of DAVID G. TRAGER, United States Attorney for the Eastern District of New York. I submit this affidavit in response and opposition to the application of the above named defendant, which application seeks an Order pursuant to Rule 32(d), F.R.Cr.P., permitting the withdrawal of the defendant's previously entered plea of guilty to the instant indictment and such other relief as may be just and proper.

PART I

THE PRIOR PROCEEDINGS HAD HEREIN

2. On November 3, 1975 arrest and search warrants were issued by the United States Magistrate for the defendant (and his co-defendants Anthony Juliano and Marshall Schreter) and certain premises in Brooklyn and Queens, New York.

3. These warrants were executed on November 4, 1975 with the defendant Schreter arrested in Queens, New York, and arraigned before the Magistrate in the Eastern District of New York; the defendant Gerardi arrested in

Boston, Massachusetts and arraigned before the Magistrate in Boston. The defendant Juliano was a fugitive until the end of March 1976. A substantial quantity of physical evidence was seized pursuant to the warrants, its character and utility will be discussed in Part II, infra.

4. Gerardi was in Boston on November 4, 1975 to stand trial in the United States District Court for the District of Massachusetts on a charge of conspiracy and concealing stolen securities that had been transported in interstate commerce, in violation of Title 18, United States Code, Sections 371 and 2315. Schreter, a fugitive co-defendant in that case, was removed to Boston for trial with Gerardi.

5. Gerardi, Schreter and several others were convicted in Boston, and on January 26, 1976 Gerardi was sentenced to imprisonment on each count (five and eight years, respectively), the sentences to run concurrently.

6. On January 13, 1976 Schreter and Gerardi appeared before the Hon. Henry Bramwell in the United States District Court for the Eastern District of New York, pursuant to a writ of habeas corpus ad prosequendum. Each defendant entered a plea of not guilty to the instant indictment (75 Cr 850), bail was fixed and counsel assigned by the Court. Each defendant was ordered returned to Boston for the sentencing described in paragraph "5".

7. On February 27, 1976, Schreter and Gerardi appeared with counsel before the Hon. Henry Bramwell in the United States District Court for the Eastern District of New York. The defendants were accorded a thirty-day period within which to file motions and a trial date of May 10, 1976 was set. On March 30, 1976 the defendant Juliano,

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who had been apprehended in Virginia and removed to the Eastern District of New York, was arraigned before the Hon. Henry Bramwell. The Court scheduled a status report with respect to all defendants for April 6, 1976.

8. On April 6, 1976, Gerardi and his co-defendants separately appeared in the District Court before the Hon. Henry Bramwell and entered a disposition to their respective charges. Schreter pleaded guilty to armed bank robbery, (Title 18, U.S.C. §2113(d)), under superseding information 76 Cr 243. Juliano pleaded guilty to bank robbery, (Title 18, U.S.C. §2113(a)), under superseding information 76 Cr 244. Gerardi pleaded guilty to conspiracy to commit armed bank robberies (Title 18, U.S.C. §371), which charge comprised the single count against Gerardi under indictment 75 Cr 850.

9. Juliano was sentenced on June 11, 1976 to imprisonment for 20 years. Schreter was sentenced on July 23, 1976 to imprisonment for 24 years. As a result of these sentences the conspiracy indictment against Juliano and Schreter was dismissed on motion of the United States. The sentence of Gerardi, scheduled for June 11, 1976, was adjourned at the defendant's request until July 2, 1976. The defendant sought the adjournment so that he might dispose of an outstanding state charge in Massachusetts.

10. On July 23, 1976, after Schreter had been sentenced, the defendant Gerardi sought an additional adjournment of his sentence until September 24, 1976.

11. On September 24, 1976, the defendant, represented by new counsel, filed a motion to withdraw his plea of guilty and reinstate a plea of not guilty. It is to be noted that between April 6, 1976 and September 24, 1976, the defendant never petitioned the Court for withdrawal of

his plea of guilty at any of the previously detailed court dates, nor sought relief in any other manner.

PART II

THE VARIOUS BASIS FOR THE
WITHDRAWAL OF THE PLEA.

A. The Claim of Innocence

12. Gerardi asserts, almost six months after the entry of his guilty plea, that he is innocent of participating in a conspiracy with Schreter and Juliano to rob banks. Moreover, he states that both Schreter and Juliano are prepared to submit affidavits and testimony to that effect. Such affidavits are conspicuously absent notwithstanding the fact that the defendant Gerardi has had ample time since his plea of guilty on April 6, 1976 to obtain them.

13. On various occasions prior to the entry of the defendant's guilty plea, counsel for the defendant and the Assistant United States Attorney assigned to the prosecution of this matter discussed the nature of the evidence the Government intended to offer at a trial of Gerardi. This evidence was to the following effect:

(a) For a period of two months immediately prior to his arrest, Gerardi was surveilled every day by special agents of the Federal Bureau of Investigation and detectives from the New York City Police Department.

(b) The surveillance revealed that from September 9, 1976 Gerardi and his co-defendants went to approximately a dozen different banks in Brooklyn, Queens and Nassau Counties. Each bank was examined with a view towards its possible robbery. Getaway or escape routes were tested. Notes were made.

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(c) The defendant assisted in the placement of stolen automobiles in position for use as switch and getaway cars in anticipation of a bank robbery.

(d) Several of the banks were examined on a number of occasions. Two of the banks examined by Gerardi were the subject of attempted robberies by Schreter and Juliano.

(e) On several occasions Gerardi was observed exiting Schreter's residence carrying certain distinctive bags. The contents of the bags included weapons and loose clothing to be used in bank robberies.

(f) Gerardi and Schreter were observed bringing the above-mentioned bags into certain premises at 172nd Street, Queens, New York. A search of these premises pursuant to arrest and search warrants revealed, among other things:

1. a carbine, a sawed-off shotgun;
2. eleven loaded revolvers;
3. ski masks;
4. plastic masks;
5. smoke grenade;
6. numerous car keys (master keys);
7. clothing used for disguise;
8. false identification papers.

(g) At none of the banks examined by the defendants did any of the defendants have accounts.

14. Counsel for the defendant was also made aware of the fact that the Government would introduce evidence of prior similar acts committed by the defendant. United States v. Deaton, 381 F.2d 114 (2d Cir. 1967). These acts concern the defendant's possession of weapons and masks.

15. Prior to the defendants appearing before the Court on April 6, 1976, Schreter and Gerardi, through their counsel, sought Government assistance in obtaining an opportunity to meet together. At their request several such meetings were afforded the defendants.

16. At the time of his arrest Schreter stated to agents of the Federal Bureau of Investigation that when he and Gerardi were observed on September 9, 1975 examining several banks, he and Gerardi were actually "casing" the banks for future robbery.

17. After Schreter entered his guilty plea on April 6, 1976, he agreed to discuss his activities with agents of the Federal Bureau of Investigation. During that interview he indicated to the agents that he and Gerardi examined one particular bank on several occasions to determine its potential for robbery.

18. I have been advised by agents of the Federal Bureau of Investigation and the Assistant United States Attorney in charge of prosecuting Gerardi and Schreter in Boston, that after the conviction Schreter submitted an unsigned affidavit that sought to exonerate Gerardi.

B. The Alleged Non-Compliance with Rule 11, F.R.Cr.P.

19. The defendant alleges that the Court failed to comply with the requirements of Rule 11 at the time the guilty plea was offered and accepted. The defendant does not allege, nor can he, that the Court did not carefully and thoroughly advise him personally of all his trial rights, the consequences of a waiver of those rights and the sentence that may be imposed under the law.

20. The plea was entered only after the defendant had an ample opportunity to evaluate his position with

the assistance of competent counsel. Several excerpts from the minutes of the plea are illustrative:

. . .

Mr. Jones [defense counsel]: If Your Honor pleases, at this time I have an application on behalf of Mr. Gerardi. After discussing the matter with my client and with the U. S. Attorney Mr. Dawson, my client has authorized me to withdraw his previously entered plea of not guilty in indictment 75 Cr 850 and offers at this time to plead guilty to said indictment in the charge, of conspiracy, a violation of Title 18, United States Code, Section 371.

(page 31)

. . .

The Court: Mr. Gerardi, has your lawyer expressed any opinion or made any prediction as to the sentence the Court will impose?

Defendant Gerardi: No, he just spoke to me really - like a real lawyer would speak to me. He gave me all his advice and opinions and told me it was up to the Court, at its discretion of what he wants to do with me.

(page 42)

. . .

The Court: Have you discussed your plea of guilty fully with your attorney?

Defendant Gerardi: Yes, sir.

(page 43)

21. The defendant claims that a factual basis for the guilty plea was not established by the Court. The Court at the outset of the proceedings read the conspiracy indict-

ment in its entirety to the defendant (transcript 33-35). The defendant acknowledged driving in the vicinity of several banks with Schreter on two specific dates and declared that Schreter went into the banks (transcript 35-36). The defendant also stated that it was Schreter's intention to steal from these banks. However, when asked by the Court if he (Gerardi) was involved in stealing from these banks, the defendant indicated he did not steal from these banks. The defendant, clearly, was not about to raise the level of his involvement from that of a conspirator to one of a bank robber. The defendant, after being advised of the nature of a conspiracy, confessed that he and Schreter were involved in a conspiracy as alleged in the indictment. Finally, the following colloquy took place:

. . .

The Court: All right, Mr. Gerardi, did you actually do what you were charged with in this indictment?

Defendant Gerardi: Yes, sir.

The Court: Did you do it knowingly and wilfully?

Defendant Gerardi: Yes, sir. (stress supplied)

(page 40)

22. Rather than showing a "reluctance" to plead guilty, the transcript displays a conscious and knowing decision on the part of the defendant to plead guilty while admitting no greater participation than is required under a conspiracy charge.

C. Miscellaneous Contentions:

23. The defendant asserts that "he was under the mistaken impression" that because his co-defendants were

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pleading guilty his choices as to proceeding to trial were limited. No elaboration is offered, nor any basis for the impression suggested. The defendant does not claim that counsel or the Court created or contributed to this alleged belief. Indeed, the Court explicitly and fully advised Gerardi of his right to trial and the Government's obligation to establish his guilt at trial beyond a reasonable doubt (transcript, pp. 32-33). The defendant stated to the Court that he was pleading guilty voluntarily and because he was guilty and for no other reason (transcript, p. 43).


24. The defendant in his affidavit sets forth that the Government promised to recommend to the Court that any sentence of imprisonment imposed by the Court run concurrently with the sentence of imprisonment the defendant is currently serving (Affidavit, pp. 5-6). Nowhere in the affidavit does the defendant claim that such a promise induced, compelled or coerced him to enter his plea of guilty. The transcript of the plea, which contains the full extent of the Government's commitment to Mr. Gerardi, clearly establishes the voluntary nature of the plea (Transcript pp. 40-43). However, the defendant's memorandum of law suggests (at page 4) that the defendant's "equivocation" coupled with the assurance by the prosecutor of a recommendation for concurrent sentences undermines the voluntary nature of the plea.

25. The defendant states that the instant motion is not a "ploy" to gain any undeserved advantage. However, prior to the defendant's substitution of new counsel and the filing of the instant motion, the defendant and assigned counsel met, at their request, with the Assistant United States Attorney handling this case. The defendant,

at that meeting, indicated to the prosecutor that if the Government was prepared to recommend to the sentencing court a sentence of one year imprisonment, the defendant would not file any motion to withdraw his plea. This request was turned down.

26. If the defendant had proceeded to trial upon his not guilty plea, the Government would have sought the testimony of Schreter in keeping with his admissions to the Federal Bureau of Investigation. If, as the defendant claims, Schreter will vouch for the defendant's innocence, the Government has apparently lost this substantive evidence. Moreover, since the admissions of Schreter would only then have impeachment value as prior inconsistent statements, the Government will have been prejudiced by the loss of vital substantive evidence from one of the defendant's co-conspirators.

27. Therefore, for the reasons set forth above, and upon the arguments developed in the annexed memorandum of law, your deponent respectfully requests that the defendant's motion to withdraw his plea pursuant to Rule 32(d) F.R.Cr.P. be in all respects denied.



SAMUEL H. DAWSON
Assistant U. S. Attorney

Sworn to before me this
7th day of October 1976

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

----- x

UNITED STATES OF AMERICA,

Plaintiffs,

-against-

Docket No. 75 Cr. 850 (HB)

GERALD JOSEPH GERARDI,

REPLY AFFIDAVIT ON APPLICATION
FOR WITHDRAWAL OF PLEA

Defendant.

----- x

STATE OF NEW YORK)

ss.:

COUNTY OF NEW YORK)

GERARD JOSEPH GERARDI, being duly sworn, deposes and says:

1. That your deponent is the defendant in the above-entitled action and has moved pursuant to Rule 32(d) of the F.R.C.P., for the withdrawal of plea. That this affidavit is in reply to the Government's affidavit of October 7th, 1976, submitted by Assistant United States Attorney Samuel H. Dawson.

2. The Government is incorrect when it states in its ¶ 2, that on November 3rd, 1975, a search warrant was issued as to me in connection with certain premises in Brooklyn and Queens, New York. Your deponent had no relationship to those premises. The arrest warrant issued against me on November 3rd, 1975, was executed in the courtroom while I was on trial in the United States District Court in Boston, Massachusetts. This action by the Government ultimately caused a mistrial resulting to my detriment.

4. On April 6th, 1976, I was brought to the United States District

Court in the Eastern District of New York, to appear before Judge Bramwell and I was in the detention pens outside the courtroom with co-defendants Schreter and Juliano. Your deponent was aware of the fact that they were pleading guilty. As a matter of fact each one told me of their actions before District Judge Bramwell on that date. Both Schreter and Juliano urged me to enter a plea of guilty. I felt that at that time I had no ongoing choices. My court assigned attorney, Theodore T. Jones, Esq., advised me that I would enter a "Serrano" type plea not having to admit guilt and that I would in any event receive in all probability an anticipated two years concurrent sentence for this case. On this basis I reluctantly moved forward and entered a plea of "Guilty".

4. After entering a plea of "Guilty" I immediately advised my court-assigned attorney, Mr. Jones that I wished to withdraw same and proceed to trial. I indicated to him -- as I always had -- that I was innocent of the charges and that a concurrent sentence of two (2) years under these circumstances was immaterial.

5. On June 11th, 1976, I was ready to withdraw my guilty plea previously entered. I did not seek an adjournment on that court date as the Government indicates in ¶ 9, and my recollection is that Schreter sought and obtained the adjournment.

6. On June 18th, 1976, Mr. Jones prepared a Motion for the vacation of my guilty plea. It was given to me some time later and I was not satisfied

with the motion. I did not have an opportunity to speak with Mr. Jones in depth so that on July 23rd, 1976, when we appeared in Court the matter was adjourned to September 24th, 1976. In the interim Frank A. Lopez, Esq., of 31 Smith Street, Brooklyn, New York 11201 was assigned to prosecute my appeal from the conviction in the United States District Court in Boston to the United States Court of Appeals for the First Circuit. I then retained him for the instant matter and he filed in my behalf the present application for the withdrawal of plea. From April 6th, 1976 to September 24th, 1976, I was prepared to proceed with a motion for the withdrawal of my guilty plea insisting as I have at all times that I was innocent of the charges. The delay which the Government seeks to attribute to me was not a tactic on my part to gain some unfair advantage. The time period only indicates that it was only in September of 1976 that I was able to obtain an attorney who would cause a proper motion to be filed in my behalf. The intention to withdraw the guilty plea was not a last-minute thought to avoid sentence but has been my continuous concern since April 6th, 1976, when I entered not a "Serrano" plea as I had been assured but what in effect amounted to extractions by the Court of some indications of guilt. The minutes of plea do not reflect the intention of a defendant to plead guilty but rather the picture before the Court still insisting upon his innocence and only reluctantly and under the specific circumstances giving up his right to litigate the issues by trial.

7. An evidentiary hearing would give your deponent an opportunity to call Mr. Jones to the stand and testify to the facts set forth in this affidavit. Accordingly I invite such a hearing on this issue.

8. Juliano is in Leavenworth, Kansas Federal Prison. Schreter is in the Atlanta Penitentiary in Georgia. I am in federal custody in New York City. Unfortunately I neither have the funds nor the mobility to send my attorney to different parts of the country to see both co-defendants in order to obtain affidavits. Both have indicated to me that they are prepared to testify in my behalf as to my innocence. Both are in federal custody. As a matter of fact the Government well-knows that Juliano claimed at his sentence that I was not guilty of the charges contained in the indictment. Your deponent asks the Court to intercede in his behalf and have the Government produce Juliano and Schreter before this Court for testimony at an evidentiary hearing on my right to withdraw the plea of guilty and to proceed to trial where the issue of innocence or guilt may be properly litigated.

9. The offer of proof made by the Government as to my guilt is untrue. No weapons or other instrumentalities were ever found or taken from my possession relating to the offenses charged. None of the criminal instrumentalities can even be attributed to me. The alleged surveillances of my person for a period of two months do not in themselves prove that I intended any bank robberies for the very reverse is true: I participated in none. The similar con-

duct evidence the Government claims it will offer is factually untrue since I never had possession of weapons, etc., under similar circumstances indicated in this indictment. In any event, the Government is careful not to mention what specific similar conduct evidence they would offer so that I might properly rebut the allegation. If the Government refers to the Boston federal case such evidence would be clearly inadmissible since it is not relevant and furthermore the weapons, etc. in that case were not found in my possession.

10. The purpose of the meetings which the Government discusses in ¶ 15, was for the purpose of having my co-defendants advise my then assigned counsel that I was innocent of the charges. Both Juliano and Schreter both indicated that they would not testify at a joint trial with me. My assigned attorney made no application for severance under these circumstances.

11. Schreter specifically advised the F.B.I. at the time of the arrest that I did not "case" any banks with him but in fact I was innocent of the charges. The Government's assertion that Schreter implicated me in criminal conduct in this case is a sham and meritless [Government's affidavit, ¶ 17]. After his guilty plea the Government maintains that Schreter indicated that I was involved with him in his own criminal venture. The Court should take remedial action and provide a hearing to determine facts which the Government feels sufficiently important to allege while opposing a hearing to prove their veracity. The affidavit attributed to Schreter after his conviction in federal court Boston sought to exonerate me of the charges. I have never seen this affidavit and the Government should pro-

duce it at this time under Brady. I am alarmed that at this late date the Government now admits that they have evidence even in an unsigned affidavit by a co-defendant in this case relating to my evidence and to my innocence which they have not previously revealed either to the Court or to myself. The Court therefore should cause Schreter to appear before this Court at an evidentiary hearing and accept his offer to testify in my behalf.

12. This Court should permit me to withdraw my plea of guilty and to proceed to trial for the following reasons:

- a] I am innocent. The Court should be interested that justice be done even if this means the inconvenience of a trial. The issue is not to preserve an ill-gotten guilty plea merely because the sentence will be concurrent but to furnish me with the opportunity to hear the Government's case before a trial jury on the issue as to the establishment of my guilt before a trial jury beyond a reasonable doubt.
- b] The Government does not claim that as a result of my plea their prosecution has been aborted. Their witnesses are no longer available. That the motion is a sham or ploy to reap an advantage. The Government claims on affidavit that they have an impressive case against me in which a trial jury will surely convict me. I would therefore be exposed to a consecutive sentence. The Government should be given an opportunity to present their case to a trial jury and prove their case at trial and not by affidavit.
- c] I have two witnesses, co-defendants in this case, both in federal custody that will come forward and declare my innocence of the charges before a trial jury upon their oaths. I should not be denied this opportunity. I ask the Court to protect me and request an evidentiary hearing. Court-assigned counsel did not take the necessary steps to ask for a severance in this matter and seek to obtain

the testimony at my seperate trial of the two co-defendants.

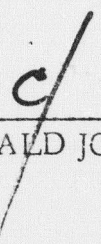
d] From April 6th, 1976, onward I advised my court-assigned attorney that I wished to withdraw my plea. The motion for withdrawal that he prepared, Exhibit A, was unsatisfactory. It was only after I prevailed upon new counsel on a retained basis that the instant motion was filed. The record will clearly establish that my intention to withdraw the plea was not a belated hoax to obtain some late advantage. There is no delay on my part working towards an unfair advantage to the prosecution.

e] My guilty plea was extracted under a misunderstanding. I believed that I would enter a "Serrano" type plea. Instead in the presence of the Court admissions were extracted from me. The plea minutes clearly show my reluctance at accepting the plea. The Court halted the proceedings on more than one more occasion. That record does not reveal a clear intention to barter away my innocence.


f] I knew of the intentions of my co-defendants to plead guilty since we were in the same detention location outside the courtroom together. The fact that I was not in the courtroom to hear them plead guilty is immaterial. I knew they were pleading guilty and that fact was confirmed to me in the detention area previous to appearing before this Court. The minutes of plea does not demonstrate clarity of intention but rather equivocation.

g] A trial jury should be given the opportunity to determine my innocence or guilt. The Government claims that in addition to its original witnesses they will call co-defendant Schreter. I welcome such an opportunity both at an evidentiary hearing and at trial. Under these circumstances, the Government should be confident in its own affidavit to the effect that it will prevail and perhaps reap advantages from the Schreter testimony.

WHEREFORE, your deponent respectfully requests that this Court grant the withdrawal of plea and permit the defendant herein to proceed to trial before a jury and that furthermore this court grant an evidentiary hearing to determine the factual disputes on the issue of the voluntary nature of my plea, and that moreover Marshall Kenneth Schreter and Anthony M. Juliano, be produced from federal custody on Writs of Habeas Corpus ad testificandum to provide testimony on this issue, together with such other and further relief as the Court may consider proper and just under the circumstances.


GERALD JOSEPH GERARDI

Sworn and subscribed to before
me this 13th day of October, 1976.


FRANK A. LOPEZ
Notary Public, State of New York
No. 24-4629725 Dist. In Kings Co.
Commission Expires March 20, 1977

A 31

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

-----X
UNITED STATES OF AMERICA :

-against- :

MARSHALL KENNETH SCHREIBER and :
GERALD JOSEPH GERARDI, :

Defendant(s) :
-----X

SECTION OF PETITION TO VACATE
GUILTY PLEA

Court Book 1-100.

10 CR 150

S I R :

PLEASE TAKE NOTICE that upon the above duly sworn affidavit of GERALD JOSEPH GERARDI and the affirmation of THEODORE P. JOHNS, JR., ESQ., upon the indictment herein and upon all of the papers and proceedings had herein, the undersigned will move this Court before Judge HENRY BRAMWELL for an order, pursuant to Rule 32(d) of the Federal Rules of Criminal Procedures, permitting the above named defendant, GERALD JOSEPH GERARDI to withdraw his plea of guilty heretofore interposed and to enter a plea of not guilty to the indictment herein, and for such other and further relief as to the Court may seem just and proper.

DATED: June 18, 1976

Yours, etc.,

THEODORE P. JOHNS, JR.
Attorney for Defendant
Office & P.O. Address
16 Court Street
Brooklyn, New York 11241

TO:

Clerk, United States District Court
Eastern District of New York

DAVID G. TRAGER
UNITED STATES ATTORNEY
EASTERN DISTRICT OF NEW YORK

A.
~~EXHIBIT~~

PAGE

BEST COPY AVAILABLE

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

-----X
UNITED STATES OF AMERICA :

-against- :

MARSHALL KENNETH SCHNEITER and :
GERALD JAMES GERARDI, :

:
Defendant(s)
-----X

AFFIDAVIT

Court Docket No.

75 CR 850

1. I, JAMES GERARDI being duly sworn deposes and says:

2. That I am the defendant in the above captioned matter and that I make this affidavit in support of the motion to withdraw my plea of guilty.

3. That heretofore and on or about January 1976, I was indicted by the Grand Jury of the Eastern District of New York and charged with violation of Title 18, U.S.C., Sections 2385(a) and 2383(d).

4. That thereafter and on or about April 6, 1976, I entered a plea of guilty to said indictment.

5. That prior to the entry of said plea I had been convicted in the District Court of Massachusetts for a conspiracy of a nature similar to the instant indictment.

6. That following said conviction I was in a state of mental and emotional distress and, therefore, fearful of proceeding to trial on this indictment.

7. That my fear of being again found guilty led to my decision to plead guilty.

8. That I am not guilty of the conspiracy charged in the present indictment.

9. That I was not forced or coerced in any way at the time of the entry of said plea, but that my mental state was such that I did not want to

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go through the ordeal of another trial.

9. That I have consulted with my attorney THEODORE T. JONES, ESQ., and have requested that he petition this court to allow me to withdraw my plea.

WHEREFORE, I respectfully request that I be allowed to withdraw my previously entered plea and proceed to trial in this matter.

Dated: Brooklyn, New York
June 17, 1976

GERALD JOSEPH GERARDI

Copy to be filed in this

case on June 17, 1976

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

UNITED STATES OF AMERICA :
-against- :
MARSHALL KENNETH SCHRETER and :
GERALD JOSEPH GERARDI, :
Defendant(s). :
-----X

AFFIRMATION

Court Docket No.
75 CR 850

STATE OF NEW YORK }
COUNTY OF ... } ss.:

THOMAS W. JONES, JR., Esq., affirms the following under penalty of perjury:

1. That I am the attorney for the above named defendant and that I make this affirmation in support of the motion to withdraw his plea of guilty.
2. That I was assigned to represent said defendant and conferred with him and with the United States Attorney prior to the entry of his plea guilty.
3. That the defendant was indicted along with two co-defendants in a conspiracy to defraud pursuant to Title 18, United States Code, Section 112(a) and 2113(d).
4. That pursuant to negotiation and agreement the co-defendants entered a plea of guilty.
5. That Mr. GERARDI expressed to me a desire to enter a plea of not guilty and did so on April 6, 1976, before this court.
6. That subsequently and on or about June 15, 1976, Mr. GERARDI contacted me and informed me that he wished to withdraw his plea and to proceed to trial.
7. That he gave as his reason the explanation that although he

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had entered a guilty plea he was not in fact guilty, and did so only because of his anguish and disappointment with the outcome of his trial in Massachusetts.

WHEREFORE, I respectfully request that the defendant GERALD JOSEPH GERRARD be permitted to withdraw his plea of guilty and proceed to trial on the above indictment.

Dated: Brooklyn, New York
June 18, 1976

THEODORE T. JONES, JR.

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UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

-----X

UNITED STATES OF AMERICA, :
-against- : 75-CR-850
MARSHALL K. SCHRETER, :
GERALD GERARDI, ANTHONY M. :
JULIANO, :
Defendants. :

-----X

United States Courthouse
Brooklyn, New York
April 6, 1976

B e f o r e :

HONORABLE HENRY BRAMWELL, U.S.D.J.

HENRI LEGENDRE
ACTING OFFICIAL COURT REPORTER

Appearances:

DAVID G. TRAGER, ESQ.
United States Attorney
for the Eastern District of New York

BY: SAMUEL H. DAWSON, ESQ.
Assistant U.S. Attorney

EDWARD J. KELLY, ESQ.
Attorney for Defendant Schreter

THEODORE T. JONES, ESQ.
Attorney for Defendant Garardi

LEONARD J. LEVINSON, ESQ.
Attorney for Defendant Juliano

1 1 THE CLERK: Criminal Cause Status Report, United
2 States of America versus Marshall K. Schreter, Gerald
3 Gerardi, and Anthony M. Juliano.

4 MR. KELLY: This is the defendant, Mr. Schreter
5 who has been indicted under 75 CR 850, he now, however,
6 is going to waive indictment and offer to plead guilty
7 to a superceding information.

8 THE COURT: What is your full name, please?

9 DEFENDANT SCHRETER: Marshall Schreter.

10 THE COURT: How old are you?

11 DEFENDANT SCHRETER: 41.

12 THE COURT: Now, have you seen a copy of the
13 charge against you?

14 DEFENDANT SCHRETER: Yes, I have, your Honor.

15 THE COURT: And have you gone over it with your
16 attorney?

17 DEFENDANT SCHRETER: Yes, I have.

18 THE COURT: And do you understand it?

19 DEFENDANT SCHRETER: Yes.

20 THE COURT: Now, unless you waive indictment you
21 may not be charged with a felony unless a grand jury
22 finds by return of an indictment that there is probable
23 cause to believe that a crime has been committed, and
24 that you committed the crime.

25 If you do not waive indictment, the Government

1 may present the case to the grand jury and request the
2 grand jury to indict you. A grand jury is composed on
3 at least sixteen and not more than twenty-three persons,
4 and at least twelve grand jurors must find that there
5 is probable cause to believe that you committed the crime
6 with which you are charged before you may be indicted.

7 A grand jury might or might not indict you for
8 the same or some other offense. If you waive indictment
9 by the grand jury, the case will proceed against you on
10 the U.S. Attorney's information, just although you had
11 been indicted.

12 Now, Mr. Schreter, I ask you if you have dis-
13 cussed the matter of waiving your right to indictment
14 by the grand jury with your attorney?

15 DEFENDANT SCHRETER: Yes, I have.

16 THE COURT: Do you understand your right to
17 indictment by a grand jury?

18 DEFENDANT SCHRETER: Yes.

19 THE COURT: Have any threats or promises been
20 made to induce you to waive indictment?

21 DEFENDANT SCHRETER: No.

22 THE COURT: Do you wish to waive your right to
23 indictment by a grand jury?

24 DEFENDANT SCHRETER: Yes, sir.

25 THE COURT: Now, Mr. Kelly, do you see any rea-

1 son why the defendant should not waive indictment?

2 MR. KELLY: No, Judge.

3 THE COURT: Mr. Schreter, do you waive indictment?

4 DEFENDANT SCHRETER: Yes.

5 THE COURT: Have him sign.

6 MR. KELLY: The defendant has executed waiver
7 of indictment.

8 THE COURT: The Clerk is to file the waiver of
9 indictment together with the information as to this
10 defendant.

11 Now, Mr. Schreter, I have some other questions
12 which I must ask you.

13 Have you been advised and do you understand that
14 if you want to go to trial you have the right to a
15 speedy and public trial by jury with the assistance
16 of counsel?

17 DEFENDANT SCHRETER: Yes, sir.

18 THE COURT: You have a right to compulsory pro-
19 cess, to obtain witnesses in your behalf.

20 DEFENDANT SCHRETER: yes.

21 THE COURT: You have a right to be confronted
22 by witnesses against you.

23 DEFENDANT SCHRETER: Yes, sir.

24 THE COURT: Do you understand that you have the
25 right to plead not guilty or persist in your plea of

1 not guilty?

2 DEFENDANT SCHRETER: Yes, sir.

3 THE COURT: Do you understand if you want to
4 trial the Government has the obligation of proving your
5 guilt beyond a reasonable doubt, and if they fail the
6 jury would have the duty to acquit you?

7 DEFENDANT SCHRETER: Yes, sir.

8 THE COURT: Do you understand that if the plea is
9 accepted you would be waiving your constitutional rights
10 and the right to a trial?

11 DEFENDANT SCHRETER: Yes.

12 THE COURT: Do you understand that you will have
13 the assistance of counsel at the time sentence is
14 imposed if your plea is accepted?

15 DEFENDANT SCHRETER: Yes, sir.

16 THE COURT: Now, I will read the information
17 which is before the Court.

18 On or about the 25th day of August, 1975, within
19 the Eastern District of New York, the defendant Marshall
20 K. Schreter knowingly and wilfully by force, violence,
21 and intimidation, did take from the person and presence
22 of employees of the Manufacturers Hanover Trust
23 Company Bank, 1919 Francis Lewis Boulevard, Queens, New
24 York, approximately \$17,882 in United States currency,
25 which money was in the care, custody, control, manage-

ment and possession of the said bank, the deposits of which bank were then and there insured by the Federal Deposit Insurance Corporation, and commission of this act and offense the defendant Marshall Schreter did assault and place in jeopardy the life of the said bank employees, as well as the lives of other persons present by the use of a dangerous weapon in violation of Title 18 United States Code, Section 2113 (d).

Now, Mr. Schreter, the Court would like you to tell us in your own words what it is that you did that brings this charge before the Court at this time.

DEFENDANT SCHRETER: With reference to this robbery?

THE COURT: Yes. I want your version and your words as to what this is.

DEFENDANT SCHRETER: It is a bank robbery that I committed.

THE COURT: Not it's a bank robbery; were you part of this bank robbery?

DEFENDANT SCHRETER: Yes.

THE COURT: What did you do?

DEFENDANT SCHRETER: I drove a car on this date.

THE COURT: What date is it?

DEFENDANT SCHRETER: August 25, 1975 I went into the bank.

1 THE COURT: Which bank is it?

2 DEFENDANT SCHRETER: Manufacturers Hanover Trust
3 Company bank, Francis Lewis Boulevard, Queens, New York.

4 THE COURT: And what happened?

5 DEFENDANT SCHRETER: And I took approximately
6 \$17,000 from the tellers.

7 THE COURT: Will you tell us the conditions
8 under which this was taken; what happened at that time?

9 DEFENDANT SCHRETER: I went into the bank wear-
10 ing a -ask; I went over the counter and I took the
11 money from the cages and I left the bank.

12 THE COURT: Did you have anything in your hand?

13 DEFENDANT SCHRETER: I had a weapon in my hand.

14 THE COURT: What kind of weapon?

15 DEFENDANT SCHRETER: A 38 calibre pistol.

16 THE COURT: And you left the bank?

17 DEFENDANT SCHRETER: I left the bank.

18 THE COURT: Did you actually do what you are
19 charged with?

20 DEFENDANT SCHRETER: Yes, sir.

21 THE COURT: Did you do it knowingly and wilfully?

22 THE DEFENDANT: Yes, sir.

23 THE COURT: Now, have any promises of any kind,
24 including any promise or suggestion as to what sentence
25 will be imposed been made to you by the U.S. Attorney,

1 your lawyer, this Court or anyone else to induce a plea
2 of guilty?

3 MR. DAWSON: If I may speak on that?

4 THE COURT: Surely, Mr. Dawson.

5 MR. DAWSON: I had had discussion with the
6 defendant and his attorney, Mr. Kelly, of the Legal Aid
7 Society, on a number of occasions prior to this after-
8 noon's appearance in court, and the Government has made
9 certain commitments to the defendant by and through
10 his attorney, Mr. Kelly, and I would like to state them
11 for the record at this time. If your Honor pleases, Mr.
12 Schreter is currently serving two eight-year sentences
13 imposed by two other Courts of the United States, which
14 sentences are to run consecutively with one another.
15 The Government has stated to the defendant that at the
16 time of sentencing in this case, the Government will
17 recommend to the Court that the Court impose a sentence
18 to run concurrently with the sixteen-year sentence that
19 Mr. Schreter is presently serving.

20 Second of all, Mr. Schreter has a period of
21 time remaining unexpired on parole from a previous mat-
22 ter, separate matter. The Government has also committed
23 itself to communicate to the Court and the United States
24 Parole Board to the effect that the Government will be
25

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1 recommending on that unexpired parole time that it run
2 concurrently with whatever sentence your Honor impose
3 in this court.

4 Third, there was a seizure, a search of premises,
5 various premises in the Eastern District of New York on
6 November 4, 1975, pursuant to search warrants issued
7 by the U.S. Magistrate in this court, as a result of
8 that search certain material was seized. The Government
9 has represented to Mr. Schreter through his attorney
10 that we will not prosecute him for any of the matters
11 seized as a result of those various searches in the
12 Eastern District. Formerly, there is presently, your
13 Honor, pending against Mr. Schreter, indictment number
14 75 CR 850, which is a one-count indictment charging
15 Mr. Schreter with conspiracy; at the time of sentence
16 the Government will move to dismiss that indictment
17 when sentence is imposed in this case.

18 Fifthly, your Honor, the Government has no objec-
19 tion to the Court's imposing sentence in the Court's
20 discretion under Title 18, 4208 (a) (2) at the time of
21 sentence.

22 Six. I understand the defendant will be
23 requestin -- assuming the acceptance of the plea -- that
24 the defendant be sent under Title 18 United States Code
25 4208 (b) for a study and report at Springfield, and I

1 understand that would be Mr. Kelly's application. The
2 Government has no objection to that application being
3 granted, being sent for that study and report.

4 Finally, the Government has prepared a schedule
5 of certain robberies, all but two, on which has occurred
6 in the Eastern District of New York, and the Government
7 will file that schedule today and make it part of the
8 court's file.

9 The Government has stated to the defendant by
10 and through his attorney, that the Government will not
11 be prosecuting the defendant for the acts resulting in
12 those various instances.

13 THE COURT: How many robberies do you have?

14 MR. DAWSON: Thirty-three Eastern District
15 matters; item 34 is a matter in New Jersey. I'm
16 authorized to state on behalf of the District Attorney's
17 office for the District of New Jersey, after bringing
18 this matter to their attention, that they will not
19 prosecute the defendant for that matter; that matter is
20 listed by date and name of place on the schedule.

21 The last item, item number 35, is a matter involv
22 ing Massachusetts, District of Massachusetts. I have
23 endeavored to communicate that matter with Boston, with
24 the U.S. Attorney's office in Boston. I've spoken to
25 the FBI there in Boston and they assured me there was no

1 act of violence involved in that case, no weapons dis-
2 charged, no one assaulted or injured in any way. It's
3 our intention to include that on this schedule -- It
4 has been included in the schedule and I have been assured
5 by the District Attorney there that he will have their
6 response between today and the time of sentence so that
7 all 35 matters can be included on the schedule as they
8 are now.

9 Outside of that, your Honor, the Government has
10 made no statement, recommendations or assurances to the
11 defendant or his lawyer or both, and I would just ask
12 the Court to file this schedule, a copy of which has
13 been previously provided to the defense and perhaps
14 mark it as a Court exhibit 1 and file it with the Court
15 papers in this case.

16 THE COURT: The net effect of the Government's
17 position is that this defendant, as a result of all
18 these robberies, his sentence will be a maximum of
19 16 years?

20 MR. DAWSON: We take no position as to whatever
21 your Honor wishes to impose in this case, it's a D
22 count.

23 THE COURT: I see.

24 MR. DAWSON: Whatever sentence.

25 THE COURT: It's to run concurrently?

1 MR. DAWSON: That is correct.

2 THE COURT: I see.

3 Mr. Kelly, Do you understand?

4 MR. KELLY: Yes.

5 THE COURT: Is that agreeable?

6 MR. KELLY: Yes.

7 THE COURT: You understand that a 4208 (a) (2)
8 is discretionary; that's what Mr. Dawson is saying.

9 MR. DAWSON: Yes.

10 THE COURT: Mr. Schreter, do you understand?

11 DEFENDANT SCHRETER: Yes.

12 THE COURT: You understand that a 4208 (a) (2)
13 is discretionary?

14 DEFENDANT SCHRETER: Yes, sir.

15 THE COURT: And the net effect, the sentence
16 imposed, could exceed 16 years; do you realize that?

17 DEFENDANT SCHRETER: Yes.

18 THE COURT: Has your lawyer expressed any
19 opinion or made any prediction as to the sentence the
20 Court will impose?

21 DEFENDANT SCHRETER: No, sir.

22 THE COURT: Have you been threatened or coerced
23 by anyone into entering a plea of guilty?

24 DEFENDANT SCHRETER: No.

25 THE COURT: Are you entering the plea of guilty

1 voluntarily and of your own free will because you are
2 guilty and for no other reason?

3 DEFENDANT SCHRETER: Yes, I am.

4 THE COURT: Have you discussed your pleas of
5 guilty fully with your attorney?

6 DEFENDANT SCHRETER: Yes.

7 THE COURT: Did you personally enter into any
8 discussion with the U.S. Attorney?

9 DEFENDANT SCHRETER: Only as to what you have
10 been informed.

11 THE COURT: Only as to that?

12 DEFENDANT SCHRETER: Yes.

13 THE COURT: Now, the maximum sentence --

14 MR. KELLY: Ten thousand dollars or 25 years.

15 THE COURT: The maximum sentence which may be
16 imposed is ten thousand dollars and/or twenty five
17 years in prison.

18 DEFENDANT SCHRETER: Yes, sir.

19 THE COURT: Having been advised as to your
20 constitutional rights, the nature of the charge against
21 you, and the consequences of your plea, how do you
22 plead to the information?

23 DEFENDANT SCHRETER: Guilty, your Honor.

24 THE COURT: All right, the Court finds there is
25 a factual basis for the plea and accepts the plea of

1 guilty to the information.

2 Is there anything further?

3 MR. DAWSON: No, your Honor.

4 THE COURT: Anything on bail?

5 MR. DAWSON: He's incarcerated in lieu of one
6 million dollars but he's also under commitment for the
7 two other cases.

8 THE COURT: Bail continued. Pre-sentence report
9 is ordered and sentencing to be at such a time as the
10 pre-sentence report is prepared.

11 MR. DAWSON: Would your Honor, in light of Mr.
12 Kelly's application and mine, with respect to the D
13 sentence, for sentence and report, would your Honor care
14 to discuss that?

15 THE COURT: I would be agreeable to that sen-
16 tence, no study and report prior to sentencing?

17 MR. DAWSON: Yes.

18 THE COURT: Yes, I would go along with that.

19 MR. KELLY: The way it normally comes about is
20 that your Honor --

21 THE COURT: Send him for study.

22 MR. KELLY: He's apprised by the probation report
23 of certain factors in Mr. Schreter's background that
24 would be a basis for a B study and that's the usual way
25 until it's done, unless your Honor wants to send him

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1 for a B study now.

2 THE COURT: I wouldn't want to send him until
3 he's here for sentence. I'll consider and I'll see how
4 the probation report sets it up.

5 MR. DAWSON: After the Probation Department sets
6 up the report, the Government has no opposition to
7 sending him for that study and report.

8 THE COURT: If there is no reason why I shouldn't,
9 Mr. Kelly desires it, I will probably do it.

10 MR. DAWSON: Thank you.

11 MR. KELLY: Thank you.

12 THE CLERK: United States of America versus
13 Anthony M. Juliano .

14 THE COURT: Mr. Levenson, what are we doing this
15 afternoon?

16 MR. LEVENSON: At this time the defendant,
17 Anthony Juliano, wishes to waive indictment and wishes
18 to plead guilty to a criminal information filed or to
19 be filed by the Government.

20 THE COURT: Have you gone over the information
21 with him?

22 MR. LEVENSON: Yes, your Honor.

23 THE COURT: What is your full name, please?

24 DEFENDANT JULIANO: Anthony Michael Juliano.

25 THE COURT: And how old are you?

1 DEFENDANT JULIANO: 53

2 THE COURT: Now, have you gone over the infor-
3 mation which is before the Court with your attorney?

4 DEFENDANT JULIANO: Yes, sir.

5 THE COURT: Do you understand it?

6 DEFENDANT JULIANO: Yes, your Honor.

7 THE COURT: Now, I wish to inform you that unless
8 you waive indictment you may not be charged with a
9 felony unless a grand jury finds by reason of an indict-
10 ment that there is probable cause to believe that a
11 crime has been committed and that you committed it. If
12 you do not waive indictment the government may present
13 the case to the grand jury and request it to indict you.

14 A grand jury is composed of at least 16 and not
15 more than 23 persons, and at least 12 grand jurors must
16 find there is probable cause to believe that you committed
17 the crime with which you are charged before you may be
18 indicted.

19 A grand jury might or might not indict you for
20 the same or some other offense. If you waive indictment
21 by the grand jury, the case will proceed against you
22 on the U.S. Attorney's information, just as though you
23 had been indicted.

24 Mr. Juliano, have you discussed the matter of
25 waiving your right to indictment by the grand jury with

1 your attorney?

2 DEFENDANT JULIANO: Yes, sir.

3 THE COURT: Do you understand your right to
4 indictment by a grand jury?

5 DEFENDANT JULIANO: Yes, your Honor.

6 THE COURT: Have any threats or promises been
7 made to induce you to waive indictment?

8 DEFENDANT JULIANO: No, your Honor.

9 THE COURT: Do you wish to waive your right to
10 indictment by a grand jury?

11 DEFENDANT JULIANO: Yes, your Honor.

12 THE COURT: Counsel, do you see any reason why
13 the defendant should not waive indictment?

14 MR. LEVENSON: No, your Honor.

15 THE COURT: Do you waive indictment, Mr. Juliano?

16 DEFENDANT JULIANO: Yes.

17 THE COURT: Have him sign the waiver.

18 THE CLERK: Waiver has been signed and witnessed.

19 THE COURT: The Clerk is ordered to file the
20 waiver and the information.

21 Mr. Juliano, have you been advised and do you
22 understand if you want to go to trial you have a right
23 to a speedy and public trial by jury with the assistance
24 of counsel?

25 DEFENDANT JULIANO: Yes, sir.

1 THE COURT: Do you understand you have a right
2 to compulsory process to obtain witnesses in your behalf?

3 DEFENDANT JULIAN: Yes, sir.

4 THE COURT: Do you understand you have a right
5 to be confronted by witnesses against you?

6 DEFENDANT JULIANO: Yes, your Honor.

7 THE COURT: Do you understand that you have the
8 right to plead not guilty or persist in your plea of
9 not guilty?

10 DEFENDANT JULIANO: Yes, sir.

11 THE COURT: Do you understand that if you went
12 to trial the Government has the obligation of proving
13 your guilt beyond a reasonable doubt, and if they
14 failed the jury would have the duty to acquit?

15 DEFENDANT JULIANO: Yes, your Honor.

16 THE COURT: You understand if the plea is accepted
17 you would be waiving your constitutional rights and
18 right to a trial?

19 DEFENDANT JULIANO: Yes, your Honor.

20 THE COURT: You understand that you will have the
21 assistance of counsel at the time sentence is imposed
22 if your plea is accepted?

23 DEFENDANT JULIANO: Yes, sir.

24 THE COURT: Now, the charges read on or about
25 the 25th day of August, 1975, within the Eastern District

1 of New York, the defendant Anthony M. Juliano, knowingly
2 and wilfully, by force, violence and intimidation, did
3 take from the person and presence of employees of the
4 Manufacturers Hanover Trust Company Bank, 1919 Francis
5 Lewis Boulevard, Queens, New York, approximately
6 \$17,882 in United States currency, which money was in
7 the care, custody, control, management and possession
8 of the said bank, the deposits of which bank were then
9 and there insured by the Federal Deposit Insurance
10 Corporation in violation of Title 18, United States Code
11 Section 2113 (a).

12 Now, Mr. Juliano, tell us in your own words what
13 it is that you did that brings this charge before the
14 Court.

15 DEFENDANT JULIANO: I did what this information
16 states.

17 THE COURT: You have to tell us in your words.

18 DEFENDANT JULIANO: Well, I took the sum of
19 \$17,000 some odd dollars at this bank.

20 THE COURT: Which bank was it?

21 DEFENDANT JULIAN: Manufacturers Hanover Trust
22 Company bank.

23 THE COURT Where was it located?

24 DEFENDANT JULIANO: Francis Lewis Boulevard,
25 1919, they say, I didn't know, but that's the bank.

1 THE COURT: That's in Queens?

2 DEFENDANT JULIANO: Queens; right.

3 THE COURT: When did you do this?

4 DEFENDANT JULIANO: August 25.

5 THE COURT: Of what year?

6 DEFENDANT JULIANO: 1975.

7 THE COURT: And what was it that you did? Did
8 you enter the bank?

9 DEFENDANT JULIANO: Entered the bank and announced
10 our intention and took the money.

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Week 2

1 THE COURT: And after you got the money, what
2 did you do?

3 DEFENDANT JULIANO: We left the bank.

4 THE COURT: Did you have a weapon.

5 MR. LEVINSON: If I may, I don't believe this
6 is an A information that I think he's charged with.

7 THE COURT: You actually took the money though?

8 DEFENDANT JULIANO: Myself?

9 THE COURT: Did you take it?

10 DEFENDANT JULIANO: No.

11 THE COURT: Did you go behind the teller's cage?

12 DEFENDANT JULIANO: No.

13 THE COURT: Where did you stay, near the front
14 of the bank or the middle of the bank, something like
15 that?

16 DEFENDANT JULIANO: Yes.

17 THE COURT: Did any of those who were with you
18 have weapons?

19 DEFENDANT JULIANO: Not to my knowledge. One
20 of the participants; right.

21 THE COURT: Was this weapon displayed?

22 DEFENDANT JULIANO: I guess so; yes.

23 THE COURT: Now, did you actually do what you
24 were charged with?

25 DEFENDANT JULIANO: Yes, sir.

1 THE COURT: Did you do it knowingly and wilfully?

2 DEFENDANT JULIANO: Yes, sir.

3 THE COURT: Have any promises of any kind including
4 any promise or suggestion as to what sentence will be
5 imposed been made to you by the U.S. Attorney, your
6 lawyer, this Court or anyone else to induce a plea of
7 guilty? Do you wish to speak to speak to that, Mr.
8 Dawson?

9 MR. DAWSON: I wish to make a statement.

10 THE COURT: You may.

11 MR. DAWSON: Your Honor, the defendant by and
12 through his lawyer, Mr. Levinson and I have had several
13 discussions prior to today, and including today before
14 we came into Court this afternoon, and as a result of
15 those conversations the Government made certain commit-
16 ments and representations to the defendant by his
17 attorney. I wish a brief opportunity to set those on
18 the record.

19 THE COURT: Surely.

20 MR. DAWSON: Thank you.

21 First, the Government has indicated that Mr.
22 Juliano in light of his plea of guilty here, should
23 the Court accept that plea, presently has pending
24 against him indictment number 75-CR-850, where in Mr.
25 Juliano was charged in the one count indictment with

1 conspiracy.

2 At the time of sentence in this case, your
3 Honor, the Government will move to dismiss that indict-
4 ment against the defendant.

5 Second, the defendant on November 4, 1975, as
6 a result of obtaining certain search warrants, various
7 locations within the Eastern District of New York were
8 searched and materials of various kinds, including
9 weapons were obtained. The Government has stated to
10 the defendant through his attorney that the Government
11 will not prosecute Mr. Juliano for the material
12 including weapons which were uncovered during those
13 various searches.

14 Third, your Honor, the Government has prepared
15 a schedule of additional bank robberies, and in return
16 for Mr. Juliano's plea, should the Court accept his
17 plea in this case, in addition to dismissing the
18 indictment previously mentioned, the Government has
19 stated that it will not prosecute Mr. Juliano for the
20 various items on that schedule, or for any of his acts
21 in connection with robberies listed on that schedule.
22 The schedule includes the names of various banks and
23 the dates of the alleged robberies. Now, the schedule
24 has 35 banks on it, 33 are in the Eastern District of
25 New York, the 34th is a bank in New Jersey.

1 I have been in communication with the U.S.
2 Attorney's office for the District of New Jersey and
3 they have authorized me to state that there will be no
4 prosecution by their office for item number 34. With
5 respect to item number 35 which just came to our atten-
6 tion a short while ago, I've endeavored to communicate
7 with the U.S. Attorney's office in Massachusetts since
8 that involved that district, and they will have a
9 statement for the Court. They will authorize me to
10 make a statement to the Court between now and the date
11 of sentence with respect to that.

12 I have, however, had communication with the FBI
13 agent with respect to that last matter and I've been
14 furnished with the report of that case and I've been
15 assured there were no acts of violence or assault or
16 injuries in any way stemming out of that case.

17 Nextly, your Honor, the defendant presently has
18 an unexpired parole term as a result of a prior Federal
19 conviction for approximately six years. The Government
20 has stated and represented to the defendant through
21 his attorney that the Government will recommend and
22 in writing to the Parole Board, as a result of whatever
23 sentence your Honor imposes in this case, that the
24 Parole Board run that unexpired term -- I should say
25 concurrently with whatever term your Honor imposes in

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this case.

Next, your Honor, the Government has no objection to the Court in its discretion sentencing the defendant after an examination of the pre-sentence report and hearing counsel for the defendant, and the defendant to sentencing the defendant under Title 18 United States Code Section 4208(a)(2).

THE COURT: This sentence will run concurrent with the parole.

MR. DAWSON: We'll be requesting the Court and the Parole Board in writing.

THE COURT: And is there any other sentence he's now serving?

MR. DAWSON: There are no pending cases outstanding against the defendant; that as I understand it is the extent of the Government's commitment and representation to the defendant through his attorney.

THE COURT: Mr. Levinson, do you understand this?

MR. LEVINSON: Well, your Honor, there are one or two other commitments.

THE COURT: Tell me what they are.

MR. LEVINSON: Relatively minor. There is a concern of the defendant that certain --

MR. DAWSON: At one time there was an allegation the defendant possessed certain money orders. We do

1 not have any evidence of that and we will not be
2 prosecuting the defendant for that alleged possession.
3 I say alleged because we have no direct evidence that
4 he did possess it and we'll not be prosecuting the
5 defendant for his possession of those money orders.

6 MR. LEVINSON: One other matter relatively minor.
7 I believe the Government undertook not to object to
8 any sentence in the statutory maximum and would not
9 object to a sentence less than the statutory maximum.

10 MR. DAWSON: The Government's position with
11 respect to sentence, we do not request the Court to
12 give any specific sentence, that's up to the Court.
13 The defendant has been advised through his attorney
14 as to the maximum sentence the Court could impose which
15 is 20 years and a fine.

16 THE COURT: And there is no agreement as to
17 any sentence less than 20.

18 MR. LEVINSON: No, there isn't.

19 MR. DAWSON: The Government takes no position.

20 MR. LEVINSON: This is not a promise made by
21 the Government. I would like to make this statement.
22 With respect to the schedule that was attached --

23 THE COURT: Thirty five additional bank robberies.

24 MR. DAWSON: That schedule is not to be con-
25 strued as admission by the defendant that he had

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1 anything to do with any of those bank robberies.

2 We don't consider it such. We don't consider it
3 admissions by the defendant that he had anything to do
4 with it

5 THE COURT: What is the purpose of the schedule?

6, MR. DAWSON: In the event there may be a concern --

7 MR. LEVINSON: In the event the defendant may
8 be charged with it.

9 THE COURT: I'm asking the Government what is
10 the purpose of a schedule of 35 bank robberies?

11 MR. DAWSON: We have information with respect
12 to the defendant in these cases. Having examined our
13 evidence with respect to these additional cases we are
14 stating to the defendant regardless of his position
15 with respect to any of these, we will not be prosecuting
16 him for any of these.

17 THE COURT: Anything further, Mr. Levinson?

18 MR. LEVINSON: No.

19 THE COURT: Now, you understand that the 4208(a) (2)
20 is discretionary with the Court. Do you understand
21 that?

22 MR. LEVINSON: I understand that.

23 THE COURT: Now, does the defendant understand
24 that?

25 DEFENDANT JULIANO: Yes, it was explained to me.

1 THE COURT: That's discretionary. Anything
2 further as to any promises?

3 MR. DAWSON: No, your Honor.

4 THE COURT: Now, Mr. Juliano, has your lawyer
5 expressed in your opinion or made any prediction as
6 to the sentence the Court will impose?

7 MR. LEVINSON: Your Honor, I must say we had
8 discussions. Mr. Juliano asked me what my opinion was,
9 the possible sentence that would be imposed. I said
10 the sentence is entirely within the Court's discretion
11 but I ventured an opinion or a hope that the sentence
12 would probably not be the maximum sentence.

13 THE COURT: There is no promises to that, and
14 you understand that I can impose the maximum sentence.

15 MR. LEVINSON: Yes; and Mr. Juliano understands
16 that also.

17 THE COURT: There is no promises as to anything
18 less than the maximum.

19 MR. LEVINSON: I just expressed an opinion to
20 Mr. Juliano.

21 THE COURT: Mr. Juliano, I would like to know
22 what you have to say about that.

23 DEFENDANT JULIANO: Nobody can tell a Judge of
24 this Court what the sentence will be. That's been
25 explained to me.

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1 THE COURT: Have you been threatened or coerced
2 into entering a plea of guilty?

3 DEFENDANT JULIANO: No.

4 THE COURT: Are you entering the plea of guilty
5 voluntarily and of your own free will because you are
6 guilty and for no other reason?

7 DEFENDANT JULIANO: Yes, your Honor.

8 THE COURT: Have you discussed your plea of
9 guilty with your attorney?

10 DEFENDANT JULIANO: Yes, sir.

11 THE COURT: Did you personally enter into any
12 discussion with the U.S. Attorneys outside of what's
13 been discussed?

14 DEFENDANT JULIANO: No.

15 THE COURT: Do you know that the maximum sentence
16 which may be imposed is \$5000 and/or 20 years in prison?

17 DEFENDANT JULIANO: Yes, sir.

18 THE COURT: Having been advised as to your
19 Constitutional rights, the nature of the charge against
20 you and the consequences of your plea, how do you
21 plead to the information?

22 DEFENDANT JULIANO: Guilty.

23 THE COURT: The Court finds there is a factual
24 basis for the plea and accepts the plea of guilty to
25 the information.

1 Anything on bail? And the Court orders pre-
2 sentence report and sentencing is to be at such a
3 time as pre-sentencing report is prepared and before
4 the Court.

5 MR. DAWSON: The defendant is presently incarcer-
6 ated in lieu of a \$5000 bond.

7 THE COURT: Bail continued.

8 MR. LEVINSON: Thank you, your Honor.

9 THE COURT: Anything else?

10 MR. DAWSON: We have one more.

11 THE CLERK: United States of America versus
12 Gerald Gerardi.

13 MR. DAWSON: If the Court pleases, before the
14 Court is Defendant Gerald Joseph Gerardi on 75-CR-850.

15 THE COURT: Yes, Mr. Jones?

16 MR. JONES: If your Honor please, at this time
17 I have an application in behalf of Mr. Gerardi. After
18 discussing the matter with my client and with the
19 U.S. Attorney Mr. Dawson, my client has authorized me
20 to withdraw his previously entered plea of not guilty
21 on indictment 75-CR-850 and offers at this time to
22 plead guilty to said indictment in the charge of
23 conspiracy, a violation of Title 18, United States
24 Code, Section 371.

25 THE COURT: What is your full name?

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1 DEFENDANT GERARDI: Gerald Joseph Gerardi.

2 THE COURT: And how old are you?

3 DEFENDANT GERARDI: 42.

4 THE COURT: And Mr. Jones is your attorney?

5 DEFENDANT GERARDI: Yes, sir.

6 THE COURT: Now, have you been advised and do
7 you understand that if you want to go to trial you
8 have the right to a speedy and public trial by jury
9 with the assistance of counsel?

10 DEFENDANT GERARDI: Yes, sir.

11 THE COURT: You have the right to compulsory
12 process, to obtain witnesses in your behalf.

13 DEFENDANT GERARDI: Yes, sir.

14 THE COURT: You have a right to be confronted
15 by witnesses against you.

16 DEFENDANT GERARDI: Yes.

17 THE COURT: Do you understand that you have the
18 right to plead not guilty or persist in your plea of
19 not guilty?

20 DEFENDANT GERARDI: Yes, sir.

21 THE COURT: Do you understand that if you went
22 to trial the Government has the obligation of proving
23 you guilty beyond a reasonable doubt, and if they
24 fail, the jury would have the duty to acquit.

25 DEFENDANT GERARDI: Yes, sir.

1 THE COURT: You understand if the plea is
2 accepted you would be waving your Constitutional rights
3 and a right to a trial?

4 DEFENDANT GERARDI: Yes, sir.

5 THE COURT: You understand that you will have
6 the assistance of counsel at the time sentence is
7 imposed if your plea is accepted?

8 DEFENDANT GERARDI: Yes, your Honor.

9 THE COURT: The indictment reads as follows:

10 On or about and between the 9th day of September
11 1975 and the 4th day of November 1975, both dates being
12 approximate and inclusive, within the Eastern District
13 of New York and elsewhere, the defendant Marshall
14 Schreter, Gerald Gerardi and Anthony M. Juliano did
15 knowingly and wilfully conspire to commit an offense
16 against the United States in violation of Title 18,
17 United States Code, Section 2113(a) and 2113(d) by
18 conspiring to take from the person and presence of
19 employees of several diverse banks by force, violence,
20 intimidation and the use of dangerous weapons, a
21 quantity of United States currency, which currency
22 was in the care and custody of said banks, the deposits
23 of said banks being then and there insured by the
24 Federal Deposit Insurance Corporation in violation of
25 law.

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1 In furtherance of said unlawful conspiracy and
2 for the purpose of obtaining the objectives thereof,
3 the defendants Marshall K. Schreter, Gerald Gerardi and
4 Anthony M. Juliano, committed amongst others the
5 following overt acts.

6 One. On or about the ninth day of September
7 1975, the defendant Marshall Kenneth Schreter, defendant
8 Gerald Joseph Gerardi drove a vehicle to the vicinity
9 of the European American Bank and Trust Company, 330
10 Sunrise Highway, Rockville Centre, New York, whereupon
11 both defendants entered the said bank.

12 Two. On or about the 12th day of September 1975,
13 the defendant Marshall Kenneth Schreter and defendant
14 Anthony M. Juliano drove a vehicle to the vicinity of
15 the Manufacturers Trust Company Bank, 2832 Rockaway
16 Parkway, Brooklyn, New York, at which bank the defendant
17 Anthony M. Juliano made notes.

18 Three. On or about the seventh day of September
19 1975, the defendant Marshall Kenneth Schreter and
20 defendant Gerald Joseph Gerardi drove a vehicle from
21 Queens, New York to the residence of the defendant
22 Anthony M. Juliano in Highland, New Jersey.

23 Four. On or about the tenth day of October 1975,
24 the defendant Marshall Kenneth Schreter and the defendant
25 Anthony M. Juliano, drove a vehicle to the vicinity of

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1 the Chase Manhattan Bank, 187-08 Horace Harding
2 Boulevard, Queens, New York.

3 Five. On or about the 24th day of October 1975,
4 the defendant Marshall K. Schreter, Gerald Gerardi
5 met in Queens, New York and both defendants drove in
6 a vehicle to the Ridgewood Savings Bank in Queens,
7 New York, at which location Schreter entered the said
8 bank.

9 Six. On or about the fourth day of November 1975,
10 Queens, New York and elsewhere, the defendant Marshall
11 K. Schreter did possess a quantity of firearms, masks
12 and gloves. That is the indictment. You will now have
13 to tell the Court in your own words what you did that
14 brings this charge before the Court.

15 DEFENDANT GERARDI: What did I do? I was present
16 in the company of Marshall K. Schreter.

17 THE COURT: Anybody else?

18 DEFENDANT GERARDI: No.

19 THE COURT: And what did you and Schreter do?

20 DEFENDANT SCHRETER: Allegedly we --

21 THE COURT: Not allegedly. I want to know what
22 you did.

23 DEFENDANT GERARDI: WE drove in the vicinity of
24 these banks, two banks.

25 THE COURT: When was this that you drove into

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1 the vicinity of these banks?

2 DEFENDANT GERARDI: I think one was on the
3 sixth -- ninth day of September and the other time was
4 on the 24th of October.

5 THE COURT: And what purpose were you driving
6 to these banks?

7 DEFENDANT GERARDI: To be honest, the purpose I
8 drove to these banks -- well, I understand that I drove
9 to the bank with Marshall and he went into the bank.
10 The purpose I drove to the bank myself, the purpose I
11 was with him, his intention I assume was to steal
12 these --

13 THE COURT: Were you involved in this in any
14 way?

15 DEFENDANT GERARDI: Into stealing from the
16 banks?

17 THE COURT: Into stealing from these banks.

18 DEFENDANT GERARDI: No, sir.

19 THE COURT: You weren't involved in any way?

20 MR. DAWSON: If I may state none of the banks
21 in the indictment were robbed. There was no actual
22 taking of any money from these banks.

23 (Continued next page)
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1 THE COURT: Was there a conspiracy between
2 yourself and Mr. Schreter to do something?

3 DEFENDANT GERARDI: The way I understand the
4 conspiracy right now, I have to say --

5 THE COURT: A conspiracy is an agreement. Was
6 there a criminal agreement between yourself and
7 Mr. Schreter?

8 DEFENDANT GERARDI: Well, I guess I'll have to
9 say, yes.

10 THE COURT: You don't have to say anything.

11 DEFENDANT GERARDI: Yes, sir.

12 THE COURT: Are you doing that because you think
13 I want to hear it?

14 I want you to tell me, was there a conspiracy
15 between yourself and Mr. Schreter?

16 DEFENDANT GERARDI: Yes.

17 THE COURT: And what was the purpose of this
18 conspiracy?

19 DEFENDANT GERARDI: To ride in the vicinity of
20 these here banks and look at these banks.

21 THE COURT: For what purpose, to make a deposit
22 or look at the banks?

23 DEFENDANT GERARDI: I guess to look at the banks.

24 THE COURT: To look at the banks. What was the
25 purpose in looking at the banks? What was your purpose

2 1 in driving in the vicinity and looking at the banks?

2 DEFENDANT GERARDI: I believe riding in the
3 vicinity for a later date to be robbed, I guess.

4 THE COURT: And was there an arrangement, an
5 agreement between yourself and Mr. Schreter that this
6 was part of this purpose that you just spoke of?

7 DEFENDANT GERARDI: Yes.

8 THE COURT: Do you understand that a conspiracy
9 involves two or more people; do you understand that?

10 DEFENDANT GERARDI: Yes, I understand that.

11 THE COURT: And do you understand that there must
12 be an agreement between these people? Do you understand
13 that?

14 DEFENDANT GERARDI: Agreement how, sir?

15 THE COURT: There must be an arrangement, an
16 understanding, that's the basis of the agreement, an
17 arrangement and understanding.

18 DEFENDANT GERARDI: It doesn't have to be
19 verbal, just an understanding?

20 THE COURT: You could act in such a way that
21 this is an understanding of what you are doing.

22 DEFENDANT GERARDI: Yes, sir.

23 THE COURT: It doesn't have to be specifically
24 verbal or written.

25 DEFENDANT GERARDI: Yes, sir.

3 1 THE COURT: Do you understand that this is the
2 basis of a conspiracy?

3 DEFENDANT GERARDI: Yes, sir.

4 THE COURT: Now, in connection with what you did,
5 what were the dates between which you did these things
6 or around when did you do these things?

7 DEFENDANT GERARDI: Between September 6th, it
8 ended when I was arrested November 4th.

9 THE COURT: Of what year?

10 DEFENDANT GERARDI: Of '75.

11 THE COURT: And where did these things take
12 place?

13 DEFENDANT GERARDI: In New York City somewhere,
14 I'm not too familiar with New York City, but in New York
15 City somewhere.

16 THE COURT: Was it out in Long Island?

17 DEFENDANT GERARDI: Yes, out on the Island.

18 THE COURT: Did you understand that the going
19 to these banks with yourself and Schreter was part of
20 your conspiracy; did you understand that?

21 DEFENDANT GERARDI: Now, I understand it's part
22 of my conspiracy; yes.

23 THE COURT: Did you understand it then?

24 DEFENDANT GERARDI: At that time I never thought
25 that anything like this would. Now I know that this was

4 1 part of a conspiracy.

2 THE COURT: Of what you did in furtherance of
3 the conspiracy with Mr. Schreter?

4 DEFENDANT GERARDI: Yes, it has to be now, yes.

5 THE COURT: Mr. Dawson, anything further?

6 MR. DAWSON: I think the Court has covered it.
7 I was going to say that the defendant by his actions
8 and the actions of Mr. Schreter at the time back in
9 '75 clearly had an understanding of the minds rather
10 than any written agreement.

11 THE COURT: I'm sure there was no written
12 agreement. That's very rare, if it ever happens.

13 MR. DAWSON: That's correct.

14 THE COURT: All right, Mr. Gerardi, did you
15 actually do what you were charged with in this indict-
16 ment?

17 DEFENDANT GERARDI: Yes, sir.

18 THE COURT: Did you do it knowingly and wilfully?

19 DEFENDANT GERARDI: Yes, sir.

20 THE COURT: Have any promises of any kind, includ-
21 ing any promise or suggestion as to what sentence will
22 be imposed, been made to you by the U.S. Attorney, your
23 lawyer, this Court or anyone else to induce a plea
24 of guilty?

25 If you wish to say anything, Mr. Dawson, you may,

5 1 at this point.

2 MR. DAWSON: The defendant is presently serving
3 a term of eight years imposed by another U.S. District
4 Court on an unrelated matter before the Court.

5 Mr. Gerardi has been explained the maximum sentences
6 and the range of sentences that the Court may impose
7 under Title 18, Section 371. The Government has stated
8 to Mr. Gerardi that the Government will recommend
9 whatever sentence the Court will impose within that
10 range, that it run concurrently with the eight-year
11 sentence that he has in connection with the other case.

12 In addition, the Government will recommend at
13 the time of sentence a writing to the United States
14 Parole Board that as a result of Mr. Gerardi having
15 an unexpired parole term, as a result of an unrelated
16 case, that it run concurrently with whatever term your
17 Honor imposes in this particular case. Simply with
18 respect to Mr. Gerardi as it was with the other two
19 defendants, the Government wishes that schedule that
20 was filed to be included in the files of this case.

21 The Government will not prosecute Mr. Gerardi for any
22 of the matters on that schedule. He is not involved in
23 the Boston or Newark cases. As a result of certain
24 search warrants being issued in June of '75 in the
25 Eastern District of New York, a quantity of material,

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including weapons, were seized from various locations, 42
and the Government has represented to Mr. Gerardi by
and through his attorney that the Government will not
be prosecuting him as a result of the seizure of those
various items, including various weapons. Of course,
the Government has no position with respect to a
specific sentence, but the Government will impose no
objection and raise no objection to the Court's
sentencing the defendant in its discretion under Title
18, United States Code, Section 4208(a)(2). I believe
that includes all the matters that have been discussed.

MR. JONES: That is the sum and substance of it,
your Honor. In addition I expressed to my client,
while it's not binding on the Court, the hope that
the Court would not sentence him to the maximum.

THE COURT: There is no promise or suggestion.

MR. JONES: I realize that, and I have made
him aware of that.

THE COURT: You also Understand that the 4208(a)
(2) is discretionary with the Court?

MR. JONES: Yes.

THE COURT: Mr. Gerardi, do you understand the
arrangements and promises that the Government has made
in this situation?

DEFENDANT GERARDI: Yes, sir.

1 THE COURT: You understand that the 4208(a)(2)
2 is discretionary with the Court?

3 DEFENDANT GERARDI: Yes, sir.

4 THE COURT: And you understand that there is no
5 promise or arrangement for the Court to give you less
6 than the maximum?

7 DEFENDANT GERARDI: Yes.

8 THE COURT: Mr. Gerardi, has your lawyer
9 expressed any opinion or made any prediction as to
10 the sentence the Court will impose?

11 DEFENDANT GERARDI: No, he just spoke to me
12 really -- like a real lawyer would speak to me. He
13 gave me all his advice and opinions and told me it was
14 up to the Court, at its discretion of what he wants to
15 do with me.

16 THE COURT: Have you been threatened or coerced
17 into entering a plea of guilty?

18 DEFENDANT GERARDI: No, sir.

19 THE COURT: Are you entering the plea of guilty
20 voluntarily and of your own free will because you are
21 guilty and for no other reason?

22 DEFENDANT GERARDI: Yes, sir.

23 THE COURT: Have you discussed your plea of
24 guilty fully with your attorney?

25 DEFENDANT GERARDI: Yes, sir.

1 THE COURT: Did you personally enter into any
2 discussion with the U.S. Attorney other than as to
3 the promises that were made?

4 DEFENDANT GERARDI: No, sir.

5 THE COURT: Do you know the maximum penalty
6 which may be imposed, five years and/or ten thousand
7 dollars; do you know that?

8 DEFENDANT GERARDI: Yes, sir.

9 THE COURT: Having been advised as to your
10 constitutional rights, the nature of the charge against
11 you and the consequences of your plea, how do you plead
12 to the indictment before the Court?

13 DEFENDANT GERARDI: I plead guilty.

14 THE COURT: The Court finds there is a factual
15 basis for the plea and accepts the plea of guilty to
16 the indictment. Pre-sentence report is ordered.

17 MR. DAWSON: Bail in this case is \$500,000
18 plus Mr. Gerardi is incarcerated as a result of his
19 previous conviction.

20 THE COURT: Bail continued. Thank you.

21 * * *

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UNITED STATES DISTRICT COURT

EASTERN DISTRICT OF NEW YORK

- - - - -x

UNITED STATES OF AMERICA, :

-against- : 75 CR 850

GERALD JOSEPH GERARDI, :

Defendant. :

- - - - -x

United States Courthouse
Brooklyn, New York

June 11, 1976
10:00 o'clock a.m.

B e f o r e :

HONORABLE HENRY BRAMWELL, U.S.D.J.

HEYWARD C. DAVIS
ACTING OFFICIAL COURT REPORTER

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DAVID G. TRAGER, ESQ.
United States Attorney
for the Eastern District of New York

BY: SAMUEL H. DAWSON, ESQ.
Assistant U.S. Attorney

THEODORE T. JONES, ESQ.
Attorney for the Defendant

THE COURT: Mr. Dawson, the adjournments, I'd like you to put them on the record.

MR. DAWSON: Yes. I have received phone communication from Mr. Theodore Jones, representing Mr. Gerardi and Mr. Edward Kelly of the Legal Aid Society, representing Mr. Slade, and they each advise me that their clients have a joint case in Boston, Massachusetts which they wish to dispose of prior to being sentenced in this court so that they may make appropriate applications to this Court at the time of sentencing on the matter pending here. And, that indeed a writ had been signed in Massachusetts authorizing the marshals to transport those two gentlemen to Boston. Whether that's occurred yet, I'm not sure.

THE COURT: Yes.

MR. DAWSON: However, both counsel requested July second for sentence in this case and authorized me to state that request, and that was with the full knowledge of each of their clients. And they also told me they would be sending letters or communicating with chambers to that effect.

THE COURT: No, I didn't get those.

That's for Marshal Kenneth Slade and Gerald Joseph Gerardi. Adjourned to July second.

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MR. DAWSON: Yes, thank you.

THE COURT: Thank you.

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1 UNITED STATES DISTRICT COURT
2 EASTERN DISTRICT OF NEW YORK

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3 -----X
4 UNITED STATES OF AMERICA, :

5 - against - :

75 CR 858

6 GERALD JOSEPH GERARDI, :

7 Defendant. :

8 -----X
9 United States Courthouse
10 Brooklyn, New York

11 July 23, 1976
12 10:30 A.M. O'clock

13 B e f o r e:

14 HONORABLE J. BRAMWELL, U.S.D.J.
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23 STEVEN A. TESSLER
24 COURT REPORTER
25

1 A p p e a r a n c e s :

2 DAVID G. TRAGER, ESQ.
3 U.S. Attorney for the
4 Eastern District of New York

5 BY: Samuel H. Dawson
6 Assistant U.S. Attorney

7 THEODORE T. JONES, ESQ.,
8 Attorney for the Defendant.
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1 THE COURT: Counsel, is there any legal
2 reason that this defendant should not be sentenced
3 at this time?

4 MR. JONES: If Your Honor please, my application
5 to the Court this morning is that the sentence of
6 Mr. Gerardi be adjourned until approximately the
7 middle of September.

8 THE COURT: That could be done. It will be
9 adjourned, sentence is adjourned to September 24th,
10 would that be all right?

11 MR. JONES: September 24 is fine.

12 THE COURT: September 24, thank you.

13 (Whereupon at this time Criminal Cause for
14 sentencing was adjourned.)

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16 * * * * *

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

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UNITED STATES OF AMERICA, :

-against- :

75-CR-850

GERALD JOSEPH GERARDI, :

Defendant. :

-----x

United States Courthouse
Brooklyn, New York

September 24, 1976

B e f o r e :

HONORABLE HENRY BRAMWELL, U.S.D.J.

PERRY AUERBACH
ACTING OFFICIAL COURT REPORTER

Appearances:

DAVID G. TRAGER, ESQ.
United States Attorney
for the Eastern District of New York

BY: SAMUEL DAWSON, ESQ.
Assistant U.S. Attorney

THEODORE T. JONES, ESQ.
Attorney for the Defendant

1 THE COURT: Good morning, Mr. Jones.

2 MR. JONES: Good morning.

3 THE COURT: Is Mr. Lopez here?

4 MR. JONES: I called his office, your Honor.
5 I understand that he is desirous of taking over the
6 representation of Mr. Gerardi.

7 THE COURT: If he really desires, he really
8 ought to be here, and if he's been retained, he ought
9 to be here.

10 MR. JONES: His office told me --

11 THE COURT: I don't know. Do you want me to
12 put this over to Monday? What do you think? I am not
13 just going to do it on papers. I think he's to be
14 here. Do you want to put this over to Monday?

15 MR. JONES: Yes. Monday will be fine.

16 THE COURT: All right, we will adjourn this to
17 Monday.

18 MR. JONES: I will notify his office again.

19 THE COURT: That's the 27th, September 27th at
20 10:00 a.m., and you tell him he must be here.

21 THE CLERK: What about the sentence, Judge?
22 It's adjourned to Monday too?

23 THE COURT: There's a substitution of attorneys
24 here. So the other attorney isn't even here. All
25 right.

(Whereupon an adjournment was taken until
September 27th at 10:00 o'clock a.m.)

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UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

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UNITED STATES OF AMERICA,

-against-

75 CR 850

GERALD JOSEPH GERARDI,

Defendant

-----X

United States Courthouse
Brooklyn, New York

October 8, 1976
9:30 o'clock A.M.

Before :

HONORABLE HENRY BRAMWELL, U.S.D.J.

STEVEN A. TESSLER
OFFICIAL COURT REPORTER

A p p e a r a n c e s :

DAVID G. TRAGER, ESQ.
United States Attorney
for the Eastern District of New York

BY: SAMUEL DAWSON, ESQ.
Assistant U.S. Attorney

FRANK A. LOPEZ, ESQ.
Attorney for Defendant

BY: LONARD FUSFELD, ESQ.

1 THE COURT: Yes, sir.

2 MR. FUSFELD: Frank A. Lopez by Lenard Fusfeld.

3 If your Honor please, Mr. Lopez is actually
4 engaged against the People versus Sorenson, Kings
5 County. It's a Federal funded part. He was requested.

6 THE COURT: That is not the problem. Are your
7 papers ready in connection with this; are the papers
8 in? I'm either going to do it on the paper or have
9 argument. But you're going to ask for an adjournment.
10 How long?

11 MR. FUSFELD: The trial should be about two
12 weeks, your Honor.

13 THE COURT: We're either going to take this on
14 a submission, or argument. If he wants argument, he
15 can have it this morning. If you want to argue, you
16 can argue it.

17 If it isn't that, then I want everything submit-
18 ted and the Court will render a decision.

19 MR. FUSFELD: The reason Mr. Lopez is engaged,
20 a special request by the Administrative Judge.

21 THE COURT: There have been many adjournments
22 in this matter and there have been many adjournments.
23 So I am not going to adjourn it any more, it's either
24 going to be submitted or argued this morning.

25 Are all the papers in from Mr. Lopez? You

1 better take care of that. If they're not in, I'll give
2 you until Tuesday to get them in. That's all.

3 But it's either submitted or argued.

4 MR. DAWSON: The Government has submitted its
5 memorandum of law to the Court and Counsel.

6 THE COURT: That is it, because this case has
7 been adjourned too many times and I'm not going to
8 continue that practice. You can consider this case
9 submitted, and if you haven't gotten a memorandum of
10 law in, you have until noon of Tuesday to get that in.

11 MR. FUSFELD: I might add, your Honor, I believe
12 when Mr. Lopez submitted the defendant's affidavit,
13 sometime shortly thereafter he submitted a memorandum
14 of law.

15 THE COURT: I think he did. We'll mark it
16 submitted at this point.

17 MR. FUSFELD: Okay, thank you, your Honor.

18 THE COURT: Sentence is adjourned for one week.
19 It's marked submitted. Sentence is adjourned to
20 October 15th at 10 A.M.

21 MR. FUSFELD: Thank you, your Honor.

22 Mr. Gerlich is on the same trial. I spoke to
23 his secretary.

24 THE COURT: How much longer is he to be on that
25 trial?

1 MR. FUSFELD: The affidavit states he would like
2 an adjournment. I think it says the bottom line at
3 least two weeks.

4 THE COURT: What is the Government's position?

5 MR. DAWSON: I don't want the man to be
6 sentenced here without his attorney. I believe
7 Mr. Agulnick does have some partners and I would like
8 him to be sentenced. Maybe one of Mr. Agulnick's
9 partners could come over and take care of the sentence
10 in a couple of weeks.

11 THE COURT: There should be someone to come in
12 to represent this defendant.

13 It's adjourned to October 22nd for sentence.

14 MR. DAWSON: At 10 o'clock, your Honor?

15 THE COURT: 10 A.M.

16 (Whereupon this hearing was terminated.)

17 * * *

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2 UNITED STATES DISTRICT COURT
3 EASTERN DISTRICT OF NEW YORK

4 -----X

5 UNITED STATES OF AMERICA, :

6 -against- : 75-CR-850

7 GERALD JOSEPH GERARDI, :

8 Defendant. :

9 -----X

10 United States Courthouse
11 Brooklyn, New York

12 October 15, 1976
13 10:00 o'clock A.M.

14 B e f o r e :

15 HONORABLE HENRY BRAMWELL, U.S.D.J.

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22 STEVEN TESSLER
23 ACTING OFFICIAL COURT REPORTER
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Appearances:

DAVID G. TRAGER, ESQ.
United States Attorney
for the Eastern District of New York

BY: SAMUEL H. DAWSON, ESQ.
Assistant U.S. Attorney

FRANK A. LOPEZ, ESQ.
Attorney for Defendant
31 Smith Street
Brooklyn, New York

BY: THEODORE JONES, ESQ.

1
2 THE COURT: Mr. Jones, as you know a motion
3 has been made to vacate the guilty plea of Mr. Gerardi
4 by Mr. Lopez. We would like to hear your position
5 concerning entry of the plea and what followed that
6 particular time.

7 MR. JONES: I think -- is this Court asking
8 me what negotiations and so on?

9 THE COURT: Not to negotiations, whether at
10 that time it was voluntary, he says that you had told
11 him there would be a Serrano type plea without --
12 and his not having to admit guilt, is that true?

13 MR. DAWSON: I don't recall ever saying that.

14 THE COURT: Did you ever tell him that?

15 MR. DAWSON: I think it was my position at
16 that time, that this particular Court would be
17 reluctant to maintain a Serrano plea.

18 THE COURT: That would have been what you would
19 have told him that a Serrano plea, you never said
20 anything to him.

21 MR. JONES: We discussed that possibility a
22 couple of times.

23 THE COURT: Who did you discuss it with?

24 MR. JONES: Mr. Gerardi.

25 THE COURT: Did you discuss it with Mr. Dawson?

1 MR. JONES: I don't believe so.

2 THE COURT: Did you ever bring it up?

3 MR. JONES: Between my client and myself we
4 discussed --

5 THE COURT: Was it your intention at the time
6 of plea that the plea be a Serrano type plea?

7 MR. JONES: No. As a matter of fact when we
8 got into the colloquy, my intention from the beginning
9 was to try this case, and as a matter of fact I was
10 personally looking forward to trying this case, and
11 what happened was I got a call from Mr. Gerardi on
12 a particular day and he asked if I could be of
13 assistance in setting up a conference between him
14 and the co-defendant Schroder who was also, at that
15 time incarcerated at MCC. I called Mr. Dawson and
16 asked if that was possible and he said he would.

17 We, since we couldn't do it at the Metropolitan
18 Correction Center there came a time when a conference
19 between all of the co-defendants. In the interim
20 appeared a third co-defendant, he was arrested in
21 Virginia. And there came a date which was I believe
22 April 6, 1976.

23 THE COURT: That is when he entered his plea?

24 MR. JONES: In any event, your Honor, I got
25

1
2 my dates mixed up, there was a conference in this
3 building, I don't know, I forget which floor it
4 was on.

5 Mr. Dawson made rooms for all the parties to
6 have a conference room, and on this particular day
7 to the best of my recollection there was present at
8 that conference two agents of the Federal Bureau of
9 Investigation.

10 Mr. Dawson, Mr. Kelly, my client, Mr. Schroder
11 and the third co-defendant.

12 THE COURT: This was prior to the entry of
13 the plea.

14 MR. JONES: Prior to the entry of the plea.
15 Up to this time it had been my intention to go to
16 trial, on this particular day I arrived at this
17 conference late. I was the last one to arrive. When
18 I arrived there I was informed by Mr. Gerardi that the
19 other two co-defendants had decided to enter a plea
20 and that he had decided also to enter a plea.

21 THE COURT: That's what he told you?

22 MR. JONES: That is what he told me. I asked
23 him at the time if he was entering a plea in fact
24 because he was guilty, or as an accommodation; he
25 said, he told me as I recollect, something to the

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2 effect that he had taken a shot like this in Boston
3 and it didn't work out, and he was critical as to
4 his guilt or innocence.

5 I made it clear to him at that time, that I
6 thought I made it clear that he was only charged with
7 conspiracy where the others were charged with actual
8 bank robbery. But, realistically speaking with a
9 prior conviction for conspiracy it would be a very
10 tough case to try, because in my opinion it would
11 be difficult to put him on the stand. Without taking
12 the stand again, in my opinion it would be difficult
13 to win.

14 Again, to the best of my recollection at that
15 point, it was at that point that he told me he was
16 interested in entering a plea of guilty.

17 THE COURT: What did you do after that?

18 MR. JONES: Well, on the day we entered the
19 plea I spoke to Mr. Gerardi in the back prior to
20 the case being called. We discussed, back and forth,
21 at that time we were talking about possible sentence.
22 Again, I made it clear to my client I thought that
23 the Court was in no way bound by any recommendation
24 and I --

25 THE COURT: Did you in any way say to him he

would get a two year sentence?

MR. JONES: I made a representation to him through Mr. Dawson, that the United States Attorney's office stated to us that they would request a sentence less than the maximum, the maximum being five years. I didn't know where it was going to fall. I felt that this Court may be included to come in, if your Honor would, somewhere around three or four, but I wasn't sure about that.

THE COURT: But, you made no promise?

MR. JONES: I wasn't in a position to make promises.

THE COURT: The Court asked him whether or not you had made any suggestions as to what the sentence might be.

MR. JONES: The promises were specifically put on the record and that was the extent of what was said. But, I did indicate to him, I did indicate to Mr. Gerardi that I thought the Court would be inclined along with Mr. Dawson's recommendation to sentence him to less than the maximum. How much less I can't say.

THE COURT: That was the recommendation, now, let me ask you. As to the motion to vacate the plea,

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2 what was your position with respect to that?

3 MR. JONES: After the plea was entered a
4 couple of weeks after we entered the plea, I believe
5 the first of the co-defendants was sentenced, I don't
6 know which date because I wasn't here.

7 MR. DAWSON: I think the record is June 11,
8 Mr. Juliano was sentenced about two months from the
9 entry of the plea.

10 MR. JONES: And Mr. Gerardi called me on the
11 telephone at my office, I believe it was from the
12 Metropolitan Correction Center. He advised me that
13 on reconsideration of his position that he wanted me
14 to make an application to this Court to withdraw his
15 plea.

16 THE COURT: Was this before or after the case
17 was set down for sentence?

18 MR. JONES: Before. Again, the sentence
19 didn't come to me through mail, this was shortly
20 after the plea was entered. What I did was on that
21 same date, because I can tell by the date of my
22 affidavit, June 18. I made the application, I drew
23 the papers that same day, because I felt that the
24 more time that passed it would appear that we would
25 be dilatory, so I immediately drew an application

1 to withdraw the plea with supporting affidavits, but
2 the problem then became that Mr. Gerardi was moved
3 to Boston and I could not file the papers until he
4 signed.

5
6 THE COURT: What date was this; do you know,
7 for sentence the first time?

8 MR. DAWSON: The case was down for sentence,
9 your Honor, on June 11, 1976.

10 THE COURT: When do you say you drew the
11 papers?

12 MR. JONES: June 18.

13 THE COURT: That means you would have, this,
14 it was after it was down for sentence, the first
15 day it was on for sentence was June 11.

16 MR. JONES: I didn't exactly --

17 THE COURT: You must have come in on that time.

18 MR. JONES: I think what happened on the first
19 time, your Honor, Mr. Gerardi was out of town, or
20 something like that.

21 MR. DAWSON: He was out of town on July the
22 2nd.

23 THE COURT: July 2nd?

24 MR. DAWSON: That is correct.

25 THE COURT: Was he here on June 11?

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2 MR. DAWSON: I believe he was.

3 MR. JONES: I don't recall.

4 THE COURT: Then Mr. Jones must have been here.

5 MR. DAWSON: I do recall, I'll state this
6 as an officer of the Court, I recall a date Mr. Jones
7 was here and Mr. Gerardi was not, I believe that was
8 the July the 2nd.

9 THE COURT: The one on the adjourned date?

10 MR. DAWSON: Correct.

11 THE COURT: Your file states that was the
12 first time it was down for sentence?

13 MR. JONES: I don't recollect, but I am bound
14 by the Court's record. The only thing I can state
15 unequivocally at this time, my papers were drawn
16 on the same day I received the phone call.

17 THE COURT: You say June 18? That is after
18 the case was down for sentence.

19 MR. DAWSON: If it pleases the Court, I am
20 reading from the trial, it bears the date June,
21 July 2nd, '76. And it reads as follows:

22 "As to Gerardi, who was on both on State
23 matter adjourned to July 23."

24 That is the date, I also have an entry date
25 of appearance in Court on July 11 which was the

1
2 date, we were in Court before that.

3 MR. JONES: Then Mr. Gerardi reminded me,
4 there came a time he was here in this building, and
5 I spoke to him downstairs and I had in my possession
6 at that time the application to draw the plea in his
7 affidavit and so on, and we discussed it.

8 THE COURT: What is the date of those papers?

9 MR. JONES: The same papers, your Honor.
10 I never drew any additional papers.

11 THE COURT: That is when you drew them?

12 MR. JONES: No. When I first drew the papers,
13 your Honor, I couldn't get in touch with Mr. Gerardi
14 to sign them for some period of time. When I next
15 saw him it was here.

16 THE COURT: July 23?

17 MR. JONES: Right.

18 THE COURT: Were the papers executed?

19 MR. JONES: The papers were never executed.
20 What happened if your Honor will bear with me, what
21 happened I had five copies of the affidavit and so
22 on, and Mr. Gerardi told me at that time that he
23 wanted to take his affidavit back to MCC to look at
24 it, because -- I am guessing now, there was something
25 I had in the affidavit which he didn't exactly agree

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2 with. So, I gave him all of the papers, one set,
3 one complete set. I said to him to take them back
4 to MCC and call me and tell me if there is any
5 changes you want me to make to fully say what you
6 have, and I will do it.

7 He took the papers back to MCC. They were
8 never executed. I went to visit him once in MCC and
9 they told me again to have the papers signed and
10 they have a lot of different hours and systems, and
11 what have you over there, and I went as far as to
12 go see the warden, and I told him these papers have
13 to be signed, because we're going to Court tomorrow
14 and if I'm going to make this application it has to
15 be done today.

16 THE COURT: Were the papers done?

17 MR. JONES: No. Because I couldn't get to
18 see him.

19 THE COURT: What date was that, if you
20 remember?

21 MR. JONES: I just have here two prison visits.
22 On neither occasion was I able to see him.

23 On the first occasion I went, this was all in
24 an effort, I went back and forth to get the papers
25 signed. I went over there and they told me he just

1
2 to Boston.

3 THE COURT: What is the date you went to
4 have those papers signed?

5 MR. JONES: I don't have the date here. I
6 have prison sentence.

7 THE COURT: What date were you at the prison?

8 MR. JONES: I don't have the dates of the
9 prison visits; I have a notation there were visits
10 between our conference on April 6th and our converence
11 on July 8th. It was sometime, I think -- I wasn't
12 even counting.

13 THE COURT: When the plea was actually taken
14 before the Court, to your knowledge, the taking
15 of a Serrano type plea was not before the Court?

16 MR. JONES: My best recollection, your Honor --

17 THE COURT: You told us you have discussed it
18 with him, but after you discussed it with him, when
19 you came into Court was there any indication what was
20 to be done?

21 MR. JONES: As a matter of fact, as I pointed
22 out to Mr. Gerardi, I do not think this Court would
23 be amenable -- my best recollection is during
24 colloquy, and the taking of the plea, I have to
25 say in all candor, I didn't agree with it necessarily,

1
2 with the plea.

3 THE COURT: Why do you say that?

4 MR. JONES: The reason he was giving a plea,
5 it seemed to me it was more or less saying as a
6 result of what happened to me, I couldn't go through
7 this case.

8 THE COURT: Why didn't you communicate it to
9 the Court?

10 MR. JONES: I didn't.

11 THE COURT: Did I prevent you from doing it?

12 MR. JONES: Communicating with the Court?

13 THE COURT: Yes.

14 MR. JONES: I felt at the time I was bound
15 professionally by what his wishes were.

16 THE COURT: What were his wishes?

17 MR. JONES: To enter the plea of guilty.

18 THE COURT: That is right.

19 MR. JONES: It was entered unequivocally, to
20 best of my recollection.

21 THE COURT: There was nothing wrong in what
22 was done?

23 MR. JONES: No.

24 THE COURT: Do you have any difficulty as to
25 the correctness of what was done?

MR. JONES: You mean as far as -- at the time?

THE COURT: When you were here.

MR. JONES: No.

THE COURT: And it was all proper?

MR. JONES: Absolutely, in my opinion, but I can't, when you say t-

THE COURT: What you may not have indicated to the Court and what -- and if there was something wrong and you felt in your duty to do what was proper at the time there is no way I can know about this.

MR. JONES: It was not -- I don't think it was a failure to communicate with the Court, which was in a province of open Court, but the nature of what he was telling me was client-attorney relationship without having him --

THE COURT: If it was your responsibility, it's no reason you're saying -- it's your responsibility to tell the Court.

MR. JONES: Absolutely, but there was nothing wrong.

THE COURT: Was there anything involuntary about his action?

MR. JONES: No. I was -- what he is reminding

1
2 me, if your Honor please, of the actions at the time
3 the plea was taken, again, Mr. Gerardi indicated
4 to me of his own volition at the time that he wanted
5 to enter that plea of guilty, that he had thought
6 about it. That he was aware of all the ramifications
7 and --

8 THE COURT: After hearing Mr. Jones the motion
9 to vacate is denied.

10 MR. JONES: If your Honor please, I add one
11 more thing. As the Court is aware Mr. Gerardi had
12 been convicted in Boston, Massachusetts of a different
13 situation entirely. And I think it was his feeling
14 at the time that since the matter was on appeal he
15 felt very strongly that it would be overturned on
16 appeal. And I think there came a point when he
17 wanted to reconsider the plea he had entered in this
18 case. Now, --

19 THE COURT: There was a point. There is no
20 question about that. There was a point when he
21 wanted to reconsider, to the best of my recollection
22 at the time the plea was taken - it was later on.

23 It appears to be possibly -- it appears to
24 be possibly subsequent to the date it was first
25 set down for sentence.

1
2 MR. JONES: As I said, my affidavit was
3 drawn the day he first communicated it to me.

4 THE COURT: What is the date?

5 MR. JONES: June 18.

6 THE COURT: That matter was set down June 11;
7 it was the first time it was in this Court for
8 sentence.

9 MR. JONES: That was the date he indicated to
10 me he wanted to withdraw his complaint.

11 THE COURT: Mr. Dawson, do you want to say
12 anything about prejudice to the Government in this
13 case?

14 MR. DAWSON: I would, your Honor, but I think
15 the Court adequately covered that title when it
16 ruled on this motion. But, I would add to the Court
17 that if the Court looked at the affidavit that
18 Mr. Jones has prepared from his own signature which
19 is appended to as Exhibit 8 -- if the Court were to
20 look at paragraph 7, I believe, or 8, I am not sure.
21 The only grounds Mr. Jones says, this is Mr. Jones'
22 affidavit I am speaking about.

23 The only ground that was communicated by the
24 defendant to Mr. Jones which Mr. Jones was prepared
25 to state in his own affidavit as an officer of the

1 Court, that had been communicated to him as being
2 put forward by the defendant to withdraw his plea
3 was, the defendant's disappointment and stress at the
4 verdict which had been rendered in the Boston matter,
5 and neither of the other grounds, appearing in his
6 first affidavit, or second affidavit in the Court
7 were apparently, even indicated to Mr. Jones, he
8 would put it in his own affidavit.
9

10 I grant you Mr. Jones did not institute that
11 affidavit and he submitted it and all that waited
12 was the signature. I know Mr. Jones as an officer
13 of the Court, he would not have tendered anything
14 that was not told to him by the defendant. In the
15 first time in this case, the other grounds are
16 alleged -- having alleged three months or four
17 months after the June affidavit, Gerardi and
18 Mr. Jones had prepared --

19 MR. JONES: I would like to say one thing,
20 your Honor, the decision to enter a plea of guilty
21 was made in the conference apparently between the
22 three co-defendants themselves before, on the date
23 that they had a meeting in this building.

24 THE COURT: Mr. Schroder, Mr. Gerardi and
25 Mr. Juliano, it was between them. This decision

was made.

MR. JONES: It was apparently, your Honor, I repeat to the Court at the so-called meeting that day --

THE COURT: When you came there that is what they told you, that they were going to plead?

MR. JONES: There was no discussion, as a matter of fact they were in the process of outlining the other two defendants.

THE COURT: Has Mr. Gerardi discussed this, or spoken to Mr. Schroder and Mr. Juliano at that time; if you know?

MR. JONES: Yes. There had been a great deal of discussion before I arrived, between Mr. Kelly, Mr. Schroder, Mr. Juliano and Mr. Gerardi.

THE COURT: Before you arrived?

MR. JONES: Before I arrived.

THE COURT: You took no part in that?

MR. JONES: By the time I arrived the decisions were already made, and in fact they were working for the FBI.

THE COURT: Was it that time Mr. Gerardi said he wished to plead guilty?

MR. JONES: Yes.

1
2 MR. DAWSON: I believe that conference took
3 place on the same day the plea was entered.

4 THE COURT: Was that the same day of the plea?

5 MR. JONES: It may have been.

6 MR. DAWSON: Our recollection is, we reported
7 in the morning some time about 10:00 o'clock and
8 the pleas were entered. I could look at the minutes
9 on page 6. The conference I believe was at 10:00
10 o'clock in the morning.

11 The minutes don't reflect what time of day
12 the plea was entered. My recollection was it was
13 in the afternoon.

14 THE COURT: Mr. Jones, this would indicate
15 that all of this about a Serrano plea and different
16 things having been brought up in your papers -- in
17 your reply, improper, incorrect --

18 MR. JONES: If I may just point out, when all
19 38 defendants discussed their case, it was apparent
20 that Gerardi's involvement in the Boston case, and
21 the conviction, the mistrial came as a complete
22 shock. I spoke with the attorneys in Boston in
23 respect to that case. Mr. Gerardi was dumbfounded.

24 THE COURT: At that point when he came in,
25 Mr. Jones came in, he told him wait a minute, he

1
2 was going to --

3 MR. DAWSON: Mr. Jones has been too elusive

4 THE COURT: This was the day of the plea?

5 MR. DAWSON: So, immediately we have a situation
6 there on April 6th, if your Honor depicts it, born
7 clearly on Mr. Jones' testimony, was it one hundred
8 percent credible.

9 THE COURT: I don't even know why you refer
10 to that. I wouldn't expect him to refer to that.

11 MR. DAWSON: Mr. Jones indicates that
12 Mr. Gerardi himself was frightened, concerned,
13 alarmed, if I might say with respect to the Boston
14 case.

15 THE COURT: Mr. Gerardi told him what he was
16 going to do, that is the point.

17 MR. JONES: Because he was afraid to go to
18 trial.

19 THE COURT: Please.

20 MR. JONES: Continue your Honor, I am talking
21 to Mr. Gerardi.

22 MR. DAWSON: I want you to go ahead.

23 MR. JONES: In that setting, Gerardi was
24 afraid. Another point I want to point out is this --

25 THE COURT: You say there was fear?

1
2 MR. JONES: Fear, because of the Boston
3 conviction.

4 THE COURT: I asked him about fear and he
5 told me there was none. I asked him about fear and
6 he told me there was none.

7 MR. JONES: I asked him about fear. He told
8 me there was fear. As far as Mr. Gerardi's intention
9 to withdraw the plea, it's quite apparent, your
10 Honor, whether the sentence was set on June 11, as
11 it was he had an early contention about going forward
12 on the plea and sentence.

13 THE COURT: Subsequent to the plea; subsequent
14 to the sentence.

15 MR. JONES: Subsequent the setting of the
16 sentence date.

17 MR. DAWSON: The first day Mr. Jones says he
18 drew papers June 18. It's subsequent to the sentence,
19 but, there was no imposition of the sentence because
20 at that time Judge, in considering the bail application
21 I am sure as your Honor knows, making a distinction
22 between a plea withdrawal, and attempt to withdraw
23 a plea --

24 THE COURT: What do you have here?

25 MR. JONES: I'm attempting to withdraw,

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1
2 there is the Court's do make a distinction in that
3 manner. I would say, your Honor, that I appreciate
4 the Court's position and the consideration that the
5 Court has given this application. However, your
6 Honor invited the United States Attorney to buttress
7 his claim that he has been prejudiced as far as this
8 is concerned, the inquiry should be by the Court,
9 but he has lost some of his witnesses, or whether
10 he has --

11 MR. DAWSON: I had intended to, your Honor,
12 I got cut off after I spoke about a point Mr. Jones
13 had raised which I thought the record should include.

14 The Government has offered an affidavit which
15 entails, to some extent, the Government's position
16 in terms of what its proof would be. One must prove
17 to the jury what was in an individual's mind, and
18 what that individual intended, and shared in terms
19 of an agreement or understanding with co-conspirators.
20 Quite often that evidence can only take the form of
21 overt acts.

22 When we proceeded to obtain an indictment,
23 and obtained an indictment in this case we did not
24 have help of any co-defendant or co-conspirators'
25 testimony. Therefore we relied totally on the

1
2 evidence outlined in our affidavits. This evidence
3 that is unique in that it gave the Government illumina-
4 tion as to what was the intention of the parties and
5 indeed what roll each of the parties was playing, for
6 the first time the Government had insight into the
7 understanding of the parties involved in this case.

8 Now, the defendant's applications saying
9 Schroder is prepared to submit affidavits that the
10 defendant is innocent -- that is Gerardi is innocent
11 with the contained indictment. The Government finds
12 it's in a position that it has no substantive evidence
13 to offer from Schroder, if defendant calls Schroder
14 to say Gerardi is innocent of this, the Government
15 does use this only for impeachment purposes, not for
16 the truth of what is in it. If the Government calls
17 Schroder in as its own witness, apparently he has had
18 communication with Schroder to the point he knew
19 Schroder is even willing to introduce affidavits.
20 If the Government calls Schroder it must now accept
21 the defendant's statement as true.

22 He would have to be prepared to hear the
23 defendant Schroder say that Gerardi is innocent and
24 all we can do at that point is, we can't even impeach
25 our own witness, so the Government has lost this

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very unique piece of evidence which it had several months ago.

MR. JONES: Your Honor, I'll not add one word to that statement. As a matter of fact I will rest on it and make the motion now for the withdrawal of the plea again on the basis of his statement. I wouldn't add anything to it.

MR. DAWSON: I also should say, under the case law as submitted in our memorandum, that showing of prejudice to the Government in and of itself is not a grounds for the withdrawal of the motion, that the withdrawal of the motion must take into consideration all of the facts and circumstances of this case, and as your Honor has so clearly indicated in my opinion many of the grounds asserted by the defendant have been nothing but a Schroder plea, and a late blooming attempt to develop a so-called actual issue requiring a hearing. I think all of those issues put a lie to all of the claims in the defendant's affidavit and Government need not show prejudice, but I think we have.

(Continue on next page.)

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Needless to say even law enforcement, with the passage of time suffers from similar deficiencies of memories to any other human being, does law enforcement, or otherwise to come to a trial many many months after the facts. We're talking now about events that occurred last September to November, somewhat more and somewhat less than a year ago today. It's very difficult for people under the best circumstances to recall details that occurred sometime ago.

The Government was first to try the case, it filed its notice of readiness timely, its prepared to try the case timely.

The defendant had two full months after his Boston conviction, and sentence in Boston, two full months and beyond for the entry of the plea in this case. And I'll rest on that statement.

MR. JONES: Nothing further to add your Honor.

THE COURT: The motion is denied. I'll hear what you have to say.

MR. JONES: Your Honor, the defendant was convicted in Boston, as your Honor is well aware of the facts, as far as his conviction there, which was posed in the amount of eight years for which

1 he is incarcerated at the present time. I would also
2 like to rely on the basis for this sentence on the
3 representation of what the Assistant United States
4 Attorney would do at the time of sentence, and I
5 would say nothing further.

6 THE COURT: What is the indication?

7 MR. DAWSON: If your Honor please, as I have
8 the transcript of the minutes of plea, I will share
9 them with Mr. Lopez if he hasn't his copy available.

10 I am specifically referring to pages 41 and
11 42 where the Government details for the report its
12 recommendation.

13 THE COURT: Give me what the Government --
14 read it.

15 MR. DAWSON: May I read it into the record.

16 It begins the top of page 41, begins with
17 Mr. Dawson.

18 "Question: The defendant is presently serving
19 a term of eight years posed by another United States
20 District Court in an unrelated matter before the
21 Court. Mr. Gerardi has been explained the maximum
22 sentence and the range of sentence is that the Court
23 may impose under Title 1, Section 371. The Government
24 has stated to Mr. Gerardi that the Government would
25 recommend whatever sentence the Court would impose

1 range, that it run concurrently with the eight-year
2 sentence he has with the other case.

3 The Government will recommend at the time of
4 sentence, a writing to the United States Parole Board
5 as a result of Mr. Gerardi having an unrelated
6 sentence, that it run concurrently with whatever
7 term your Honor gives in this particular case.

8 With respect to Mr. Gerardi as it was with
9 the other two defendants, the attorney asks that
10 schedule to be followed in this case. The Government
11 will not prosecute Mr. Gerardi for any of the matters
12 on that schedule. He is not involved in Boston or
13 newer cases. As a result of certain search warrants
14 being issued in June of 1975 in the Eastern District
15 of New York, the quantity of material including
16 weapons, were received from various locations and
17 the Government has represented to Mr. Gerardi by
18 and through his attorney that the Government will
19 not be prosecuting him as a result of the seizure
20 of those various items, including various weapons.

21 Of course, the Government has no position
22 with respect to a specific sentence, but the
23 Government will pose no objection and raise no
24 objection to the Court's sentencing its discretion
25 under Title 18 United States Code Section 3208(a)(2).

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I might add, parenthetically that section has been changed."

I continue to state, as follows on page 42, I believe that includes all the matters that have been discussed. I might add Mr. Jones makes a statement at that point and says that is the sum and substance of it, your Honor. In addition I expressed to my client while it's not binding on the Court the hope that the Court would not sentence him the maximum. The Government repeats its recommendation as stated in the minutes of the plea of April the 6th. In the recommendation to the Court if the Court imposes a prison sentence in this case that it make that sentence run concurrently with the sentence that the defendant is now serving with his conviction in Boston as we mentioned earlier, and the Government would recommend to this Court and to the United States Board of Parole that should the defendant be sentenced to a term of imprisonment in this case that the term of imprisonment run concurrently with the uninspired parole term that the defendant presently has as a result of a completely unrelated case.

THE COURT: Mr. Gerardi, do you wish to say anything?

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1 THE WITNESS: Your Honor, the only thing I can
2 say is I am really not guilty to this offense and I
3 pleaded to this offense at that time due to the fact
4 that I thought I was going to get a concurrent
5 sentence and that is the only reason I pleaded guilty,
6 for no other reason.

7 THE COURT: You thought you were going to
8 get a concurrent sentence? That is what the
9 Government has recommended and that is what the
10 Court intends to give you.

11 THE WITNESS: That is why I answered my plea
12 of guilty.

13 THE COURT: Because you wanted a concurrent
14 sentence? I am going to give you a concurrent
15 sentence, anything else?

16 MR. JONES: No.

17 THE COURT: It's adjudged that the defendant
18 is hereby committed to the custody of the Attorney
19 General or his duly authorized representative for
20 imprisonment for a term of four years, sentence
21 imposed herein shall be concurrent to the sentence
22 previously imposed on this defendant, and the
23 defendant shall become eligible for parole under
24 18 USC Section 4205(b)(2) at such time as the
25 Board of Parole may determine.

1 The Court recommends that the above term run
2 concurrently with any uninspired parole term.

3 Was that on count one?

4 MR. DAWSON: There is only one count in that
5 indictment.

6 THE COURT: Thank you gentlemen.

7 (Whereupon at this time the sentence was
8 concluded.)

9 * * *

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